No. 01-1231

JUL 19 2002
OFFICE OF THE CLERK

In The
Supreme Court of the United States

DEPT. OF PUBLIC SAFETY ON BEHALF OF HENRY C. LEE, Comm., OFFICE OF ADULT PROBATION, ON BEHALF OF ROBERT BOSCO, DIRECTOR, JOHN ARMSTRONG, COMMISSIONER,

Petitioners,

v.

SAMUEL POE,
JOHN DOE,

Respondents.

On Writ Of Certiorari To The United States Court Of Appeals For The Second Circuit

JOINT APPENDIX

SHELLEY R. SADIN*
ZELDES, NEEDLE & COOPER
1000 Lafayette Boulevard
Bridgeport, CT 06604
Tel: (203) 333-9441
Fax: (203) 333-1489

Attorneys for Respondents

RICHARD BLUMENTHAL*
Attorney General
GREGORY T. D'AURIA
Associate Attorney General
LYNN D. WITTENBRINK
PERRY ZINN ROWTHORN
MARK F. KOHLER
Assistant Attorneys General
OFFICE OF THE ATTORNEY GENERAL
55 Elm Street, P.O. Box 120
Hartford, CT 06141-0120
Tel: (860) 808-5450
Fax: (860) 808-5591

**Counsel of Record*

Attorneys for Petitioners

Petition For Certiorari Filed February 19, 2002
Certiorari Granted May 20, 2002

COCKLE LAW BRIEF PRINTING CO. (800) 225-6964
OR CALL COLLECT (402) 342-2831

TABLE OF CONTENTS

Page

Relevant Docket Entries:

United States District Court, District of Connecticut 1

United States Court of Appeals for the Second Circuit 6

Local Rule 9(C)1 Statement, United States District Court, District of Connecticut, Filed July 9, 1999... 9

Exhibits to Local Rule 9(C)1 Statement, United States District Court, District of Connecticut, Filed July 9, 1999 23

Sex Offender Registry Registration Requirement Letter..... 24

Department of Correction Memorandum regarding Revised Sex Offender Registration Procedures with Attachments A through I..... 25

Connecticut Office of Adult Probation, Sex Offender Notification Policy and Appendix, Dated October 20, 1998..... 69

State of Connecticut website..... 78

Department of Public Safety home page and Sex Offender Registry website (as of April 1999)..... 92

Local television station website home pages with direct links to Department of Public Safety Sex Offender Registry website..... 97

Answer and Affirmative Defenses to Third Amended Complaint, United States District Court, District of Connecticut, Filed July 23, 1999 99

TABLE OF CONTENTS – Continued

Page

Local Rule 9(C)2 Statement in Opposition to Plaintiff's Motion for Summary Judgment, United States District Court, District of Connecticut, Filed September 13, 1999 108

Proposed Fourth Amended Class Action Complaint for Declaratory and Injunctive Relief, United States District Court, District of Connecticut, Filed November 14, 2000 112

Ruling and Order on Cross-Motions for Summary Judgment, United States District Court, District of Connecticut, Filed March 31, 2001 134

Hearings on Motions, United States District Court, District of Connecticut, Dated May 15, 2001 163

Ruling and Order Granting Permanent Injunction, United States District Court, District of Connecticut, Filed May 17, 2001 186

Telephone Conference, United States District Court, District of Connecticut, Dated May 18, 2001 190

Memorandum Opinion on Defendants' Motion for Stay of Permanent Injunction, United States District Court, District of Connecticut, Filed May 18, 2001 201

Judgment, United States District Court, District of Connecticut, Filed May 21, 2001 207

Transcript of Civil Cause for Motion, United States Court of Appeals for the Second Circuit, Dated June 5, 2001 209

Opinion, United States Court of Appeals for the Second Circuit, Filed October 19, 2001 232

TABLE OF CONTENTS – Continued

Page

Mandate, United States Court of Appeals for the Second Circuit, Issued November 13, 2001 278

Letter from the United States Supreme Court Clerk Granting Petition for Writ of Certiorari, Dated May 20, 2002 280

RELEVANT DOCKET ENTRIES

U.S. DISTRICT COURT
DISTRICT OF CONNECTICUT (New Haven)

CIVIL DOCKET FOR CASE: #99-CV-314

Filed: 02/22/99

Doe, et al. v. Public Safety, et al.
Assigned to: Judge Robert N. Chatigny
Demand: $0,000 Nature of Suit: 950
Lead Docket: None Jurisdiction: Federal Question
Dkt # in other court: None

2/22/99	1	COMPLAINT
7/9/99	27	MOTION by John Doe, Samuel Poe for Summary Judgement
7/9/99	28	MEMORANDUM by John Doe, Samuel Poe in support of motion for Summary Judgment
7/9/99	29	STATEMENT of Material Facts by John Doe, Samuel Poe regarding motion for Summary Judgment
7/9/99	30	EXHIBITS by John Doe, Samuel Poe to facts statement, re: motion for Summary Judgment by Samuel Poe, John Doe
7/23/99	33	ANSWER & Affirmative defenses by Dept. of Public Safety, Office of Adult Probation, John Armstrong to amended complaint
9/13/99	38	CROSS MOTION by Dept. of Public Safety, Office of Adult Probation, John Armstrong for Summary Judgment
9/13/99	39	MEMORANDUM by Dept. of Public Safety, Office of Adult Probation, John Armstrong in opposition to cross motion

		for Summary Judgment & in Support of the Cross Motion for Summary Judgment
9/13/99	40	STATEMENT of Material Facts by Dept. of Public Safety, Office of Adult Probation, John Armstrong regarding cross motion for Summary Judgment
9/13/99	41	STATEMENT of Material Facts in Opposition by Dept. of Public Safety, Office of Adult Probation, John Armstrong regarding motion for Summary Judgment
9/13/99	42	MEMORANDUM in Opposition to the Motion for Summary Judgment & MEMORANDUM by Dept. of Public Safety, Office of Adult Probation, John Armstrong in support of cross motion for Summary Judgment
9/27/99	43	REPLY Memorandum by John Doe to response to motion for Summary Judgment by Samuel Poe, John Doe & in Opposition to the Cross motion for Summary Judgment
9/27/99	43	REPLY MEMORANDUM in Support of the Motion for Summary Judgment & MEMORANDUM by John Doe in opposition to cross motion for Summary Judgment by John Armstrong, Office of Adult Probation, Dept. of Public Safety
11/2/99	48	REPLY MEMORANDUM by Dept. of Public Safety, Office of Adult Probation, John Armstrong to response to motion for Summary Judgment by Samuel Poe, John Doe & Memorandum in Support of the Cross Motion for Summary Judgment

3/31/01	57	RULING and ORDER granting in part, denying in part cross motion for Summary Judgment, granting in part, denying in part motion for Summary Judgment
3/31/01	–	ENDORSEMENT granting motion to amend amended complaint
3/31/01	58	FOURTH AMENDED COMPLAINT by John Doe
4/18/01	62	MOTION by John Doe for Declaratory Judgment, for Preliminary Injunction, & for Permanent Injunction in Favor of Due Process
4/18/01	63	MEMORANDUM by John Doe in support of motion for Declaratory Judgment, motion for Preliminary Injunction, motion for Permanent Injunction in Favor of Due Process
4/18/01	64	MOTION by John Doe for Preliminary Injunction In Favor of John Doe
4/18/01	65	MEMORANDUM by John Doe in support of motion for Preliminary Injunction In Favor of John Doe
4/18/01	66	MOTION by John Doe to Certify Class
4/18/01	67	MEMORANDUM by John Doe in support of motion to Certify Class
5/4/01	70	MEMORANDUM by Dept. of Public Safety, Office of Adult Probation, John Armstrong in opposition to motion to Certify Class by John Doe
5/4/01	71	MEMORANDUM by Dept. of Public Safety, Office of Adult Probation, John

		Armstrong in opposition to motion to Certify Class by John Doe
5/7/01	72	OBJECTIONS by Dept. of Public Safety, Office of Adult Probation, John Armstrong to motion for Preliminary Injunction In Favor of John Doe by John Doe, motion for Preliminary Injunction by John Doe, motion for Permanent Injunction in Favor of Due Process by John Doe. Motion by Dept. of Public Safety, Office of Adult Probation, John Armstrong to suspend or to modify injunction
5/15/01	76	RESPONSE by John Doe to opposition to motion to Certify Class by John Doe
5/15/01	77	MOTION hearing held re: motion for Leave to file reply brief in excess of ten pages by John Doe motion for Oral Argument by John Armstrong, Office of Adult Probation, Dept. of Public Safety, motion to Certify Class by John Doe, motion for Preliminary Injunction In Favor of John Doe by John Doe, motion for Declaratory Judgment by John Doe, motion for Preliminary Injunction by John Doe, motion for Permanent Injunction in Favor of Due Process by John Doe, motion for Order for Dismissal of the Second Cause of Action of the Fourth Amended Complaint by John Doe
5/15/01	78	AFFIDAVIT of Pamela B. Simon by John Doe Re motion to Certify Class by John Doe
5/18/01	79	RULING and ORDER granting motion for Permanent Injunction in Favor of Due Process

5/18/01	80	Telephone Motion hearing held re: motion to suspend by John Armstrong, Office of Adult Probation, Dept. of Public Safety motion to Modify by John Armstrong, Office of Adult Probation, Dept. of Public Safety, motion to Certify Class by John Doe, motion for Permanent Injunction in Favor of Due Process by John Doe
5/18/01	–	MINUTE Entry: denying motion to stay, mooting motion to Modify, granting motion to Certify Class – written ruling will follow, and granting motion for Permanent Injunction in Favor of Due Process
5/18/01	81	TRANSCRIPT for date of 5/15/01
5/18/01	–	ENDORSEMENT: The motion for permanent injunctive relief was granted during the telephone conference held today and the injunction has been entered by separate order. The motion for preliminary injunctive relief as to the class is therefore denied as moot. The motion for declaratory judgment on behalf of the class is granted
5/18/01	82	MEMORANDUM OPINION re: motion to Certify Class
5/18/01	83	MEMORANDUM OPINION re: motion to stay
5/18/01	84	JUDGMENT for John Doe on the due process claim and in favor of Dept. of Public Safety, Office of Adult Probation, John Armstrong on the ex post facto claim.

RELEVANT DOCKET ENTRIES

SECOND CIRCUIT COURT OF APPEALS
CASE NO. 01-7561

5/18/01	APPELLANTS Dept. of Public Safety, Office of Adult Probation, John Armstrong, motion for stay of Injunction on appeal
5/18/01	APPELLEES John Doe, Samuel Poe memorandum in opposition to motion for stay
5/18/01	COPY of district court order dated 5/18/01 endorsed by Hon. Robert N. Chatigny RECEIVED.
5/24/01	COPY of notice of appeal and district court docket entries on behalf of Appellants Dept. of Public Safety, Office of Adult Probation, John Armstrong filed.
5/24/01	COPY of district court order dated 5/18/01 endorsed by Hon. Robert N. Chatigny, USDJ RECEIVED.
5/29/01	COPY of district court order dated 3/31/01 endorsed by Hon. Robert N. Chatigny, USDJ, RECEIVED.
5/29/01	COPY of district court order dated 5/17/01 endorsed by Hon. Robert N. Chatigny, USDJ, RECEIVED.
5/29/01	COPY of district court order dated 5/18/01 endorsed by Hon. Robert N. Chatigny, USDJ, RECEIVED.

6/4/01	COPY of notice of appeal and district court docket entries on behalf of Appellee-Cross-Appellant John Doe in 01-7600 filed.
6/5/01	ORDER FILED DENYING motion for stay [1855895-1] by Appellant Dept. of Public Safety, Office of Adult Probation, John Armstrong, endorsed on motion dated 5/18/01. "IT IS HEREBY ORDERED that the motion for stay pending appeal be DENIED." The Hon. Chester J. Straub, C.J., dissents. IT IS FURTHER ORDERED that the appeal shall be expedited.
6/7/01	COPY of district court order dated 3/31/01 endorsed by Hon. Robert N. Chatigny RECEIVED.
6/7/01	COPY of district court order dated 4/9/01 endorsed by Robert N. Chatigny, USDJ, RECEIVED.
6/7/01	COPY of district court order dated 5/18/01 endorsed by Linda I. Kunosky, Deputy Clerk RECEIVED.
6/18/01	APPELLANT-APPELLEES Dept. of Public Safety, Office of Adult Probation, John Armstrong in 01-7561 brief RECEIVED.
6/19/01	APPELLANT-CROSS-APPELLEE Dept. of Public Safety in 01-7561, Appellant-Cross-Appellee Office of Adult Probation in 01-7561, Appellant-Cross-Appellee John Armstrong in 01-7561 brief FILED with proof of service.
7/5/01	RECORD on appeal index in lieu of record filed.

7/6/01	APPELLEE-CROSS-APPELLANT John Doe in 01-7561 reply brief filed with proof of service.
7/12/01	CASE heard before CABRANES, POOLER, SACK C.JJ.
10/19/01	JUDGMENT of the district court is AFFIRMED by published signed opinion filed.
10/19/01	JUDGMENT filed.
11/13/01	JUDGMENT MANDATE ISSUED. (cv72) [01-7561]
11/28/01	COPY of district court order dated 11/14/01 RECEIVED.
12/13/01	COPY of district court order dated 12/10/01 from Robert N. Chatigny USDJ RECEIVED.
3/4/02	NOTICE of filing petition for writ of certiorari for Appellant-Cross-Appellee Dept. of Public Safety in 01-7561 dated 2/27/02 filed.
5/24/02	LETTER dated 5/20/02 from the Supreme Court advising of order GRANTING petition for writ of certiorari by Appellant-Cross-Appellee Dept. of Public Safety.

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

JOHN DOE, on behalf of himself and all others similarly situated, et al., Plaintiffs, v. DR. HENRY C. LEE, in his official capacity as Commissioner of Public Safety; et al., Defendants.	CIVIL NO. 3:99CV00314(RNC) JULY 9, 1999

LOCAL RULE 9(C)1 STATEMENT

This statement sets forth the undisputed facts that may be relevant to the issues to be decided in the parties' motions for summary judgment. The exhibits referred to herein are filed as a separate appendix. Pursuant to the Scheduling Order entered in this case, it is expected that the parties will also file a Joint Stipulation of Undisputed Facts that will include most of the undisputed facts set forth herein as well as some supplemental information.

I. PARTIES.

A. Plaintiff.

1. Plaintiff John Doe is a resident of the State of Connecticut who has been convicted of an offense that requires registration pursuant to Conn. Gen. Stat. §§ 54-250 *et seq.* John Doe is a pseudonym that is being used in

this case to protect the true identity of the plaintiff from public disclosure.

B. Defendants.

2. Defendant Dr. Henry C. Lee is and has been the Commissioner of Public Safety since approximately June 1998. Defendant Lee is sued in his official capacity.

3. As Commissioner of Public Safety, defendant Lee has certain responsibilities in connection with Public Act 98-111, as amended by Public Act 99-183. Those responsibilities are set forth in Conn. Gen. Stat. §§ 54-250 *et seq*.

4. Defendant William Carbone is and has been the Executive Director of the Court Support Services Division of the Judicial Department since September 25, 1998. Since April 2, 1999, defendant Carbone has held the position of Director of the Office of Adult Probation. As Director of the Office of Adult Probation, defendant Carbone's responsibilities are set forth in Conn. Gen. Stat. § 54-105. Defendant Carbone is sued in his official capacity.

5. Defendant John Armstrong is and has been the Commissioner of Correction since approximately January 1995. Defendant Armstrong is sued in his official capacity.

6. As Commissioner of Correction, defendant Armstrong's responsibilities are set forth in Conn. Gen. Stat. § 18-81.

7. As Commissioner of Correction, defendant Armstrong also has certain responsibilities in connection with registration of persons pursuant to Conn. Gen. Stat. §§ 54-250 *et seq*. and 54-102g.

II. REGISTRATION REQUIREMENTS.

A. Registration of Sex Offenders.

8. The Department of Public Safety has in place the following policies and/or procedures pertaining to the registration of individuals pursuant to Public Act 98-111:

a. Registration Requirement Letter;

b. Change of Address Procedures;

c. Connecticut Convictions Residing Out of State;

d. Death Notification Procedures;

e. DNA Databank Evidence Collection Protocol;

f. Fingerprints;

g. Image Process;

h. Office of Field Operations Orders/Memos;

i. Out of State Convictions, Residing in Connecticut;

j. Registration Instructions;

k. Registration Requirements; and

l. Process for Return of Registration Information.

Copies of the Department of Public Safety policies are provided as Ex. A. In the event that the Department of Public Safety replaces or modifies any of these policies and/or procedures to comply with Public Act 99-183, copies will be provided to the Court in a supplemental filing.

9. The Department of Public Safety does not conduct any assessment as to whether or not an individual poses

any threat to the safety of the community in order to determine whether or not that person is required to register pursuant to Conn. Gen. Stat. §§ 54-250 *et seq*.

10. Consistent with Conn. Gen. Stat. § 54-1421, the Department of Public Safety has a procedure in place to respond to challenges to the accuracy or completeness of conviction records of persons believed to be subject to the registration requirements pursuant to Conn. Gen. Stat. §§ 54-250 *et seq*. Other than that, the Department of Public Safety does not have statutory authority to exercise any discretion in determining whether individuals must register or whether they may be excused from registering pursuant to Conn. Gen. Stat. §§ 54-250 *et seq*.

11. The Department of Correction has required and continues to require some of the persons subject to its supervision to register pursuant to Conn. Gen. Stat. §§ 54-250 *et seq*. and 54-102g.

12. The Department of Correction has in place the following policies and/or procedures pertaining to the identification and/or registration of individuals pursuant to Conn. Gen. Stat. §§ 54-250 *et seq*. and 54-102g:

a. Department of Correction Administrative Directive 9.3 (effective date June 1, 1998);

b. Memorandum to All Agency Employees from John J. Armstrong, Commissioner regarding Exception to Administrative Directive 9.3, Admissions, Transfers and Discharge, dated September 21, 1998;

c. Sex Offender Registration (revised September 30, 1998);

d. Memorandum to Facility Contact Persons, Sex Offender Registration Procedures from Fred Levesque, Director, Offender Classification & Population Management regarding Sex Offender Registration Forms, dated September 24, 1998;

e. Memorandum to All Wardens from Fred Levesque, Director, Offender Classification & Population Management regarding Notification to Probation, dated September 28, 1998;

f. Memorandum to Facility Contact Persons, Sex Offender Registration Procedures from Fred Levesque, Director, Offender Classification & Population Management regarding Revised Sex Offender Registration Procedures, dated October 7, 1998;

g. Memorandum to Records Specialists from Fred Levesque, Director, Offender Classification & Population Management regarding Public Act 98-111, An Act Concerning the Registration of Sex Offenders, dated October 1, 1998;

h. Memorandum to All Wardens from Fred Levesque, Director, Offender Classification & Population Management regarding Sex Offender Registration Procedures, dated November 4, 1998;

i. Memorandum to All Wardens from Fred Levesque, Director, Offender Classification & Population Management regarding Sex Offender Registration Audits/Procedures, dated November 24, 1999;

j. Memorandum to Wardens from Fred Levesque, Director, Offender Classification &

Population Management regarding Repealed Statutes – Sexual Offenses, dated February 23, 1999; and

k. Sex Offender Registration Procedures for Current Inmates Convicted Prior to 10/1/1998, undated.

Copies of the Department of Correction policies and/or procedures are provided as Ex. B. In the event that the Department of Correction replaces or modifies any of these policies and/or procedures to comply with Public Act 99-183, copies will be provided to the court in a supplemental filing.

13. The Department of Correction does not conduct any assessment as to whether or not an individual poses any threat to the safety of the community in order to determine whether or not that person is required to register pursuant to Conn. Gen. Stat. §§ 54-250 *et seq*.

14. The Office of Adult Probation has in place the following policy and/or procedure pertaining to the registration of and/or community notification regarding individuals required to register pursuant to Public Act 98-111:

a. Connecticut Office of Adult Probation, Sex Offender Notification Policy, dated October 20, 1998.

A copy of the Office of Adult Probation policy and/or procedure is provided as Ex. C. In the event that the Office of Adult Probation replaces or modifies this policy and/or procedure to comply with Public Act 99-183, copies will be provided to the Court in a supplemental filing.

15. The Office of Adult Probation does not conduct any assessment of persons subject to its supervision

regarding any threat an individual poses to the safety of the community in order to determine whether or not a person is subject to the registration requirements of Con. Gen. Stat. §§ 250 *et seq*.

III. PUBLIC DISSEMINATION OF INFORMATION.

16. As of the date of this Statement, a direct link to the Department of Public Safety Sex Offender Registry is provided in the "Where Can I Find . . . " section of the "Frequently Asked Questions" section of the official website for the State of Connecticut. Copies of the pages providing these links are provided as Ex. E.

17. The Department of Public Safety Sex Offender Registry website consists of a direct link to search the database for all persons thereon registered pursuant to Public Act 98-111 as well as text providing certain information concerning the website and other direct links. The text section of the Department of Public Safety Sex Offender Registry website also includes a direct link to an e-mail address of the Department of Public Safety Sex Offender Registry Unit.

18. The database can be searched by last name, the first letter of a last name, town name or zip code. Searching the database by the first letter of a last name provides the names of all registrants whose last name begins with the selected letter. Searching the database by any town name or zip code provides the names of all registrants living in that town or zip code.

19. The listing of the name of the registrant provides a direct link to a page entitled "Registered Sex Offender."

If the registrant has complied with the registration requirement and there have been no technical difficulties and the Department of Public Safety has had time to post the information, this page contains the name, current residence address as provided by the registrant, a photograph, and physical description.

20. Exhibit F provides a true and complete copy of the text of the Department of Public Safety Sex Offender Registry website prior to late March 1999.

21. Exhibit G provides a true and complete copy of the text of the Department of Public Safety Sex Offender Registry website beginning in approximately April 1999.

22. Individual sex offender listings on the Department of Public Safety Sex Offender Registry website were accessed approximately 3,045,465 times between January 1, 1999 and May 30, 1999. The number of times individual sex offender listings were accessed per month during this period was approximately as follows:

January 1999	1,937,340
February 1999	383,701
March 1999	356,879
April 1999	191,248
May 1999	176,297

23. The Department of Public Safety Sex Offender Registry Unit received a total approximately 92 e-mail messages from members of the public during the month of April, 1999, approximately 76 e-mail messages from members of the public during the month of May, 1999, and approximately 40 e-mail messages from members of the public during the month of June, 1999.

24. Exhibit H provides true and complete copies of website home pages for local television stations that provide direct links to the Department of Public Safety Sex Offender Registry website.

IV. COMMUNITY NOTIFICATION REGARDING SEX OFFENDERS.

25. The Department of Public Safety has in place the following policy and/or procedure pertaining to the public dissemination of information concerning persons registered pursuant to Public Act 98-111:

a. Memorandum to OFO Commanders from Lieutenant Colonel Timothy F. Barry, dated November 16, 1998.

A copy of this policy is provided as Ex. D. In the event that the Department of Public Safety replaces or modifies this policy and/or procedure to comply with Public Act 99-183, copies will be provided to the Court in a supplemental filing.

26. The Department of Public Safety does not have a procedure to permit registrants to contest the necessity of notification to protect the public or any individual in any jurisdiction from the registrant.

27. The Office of Adult Probation has the following policy in place regarding notification of members of the community regarding a person under the supervision of the Office of Adult Probation who has been convicted of a sexual offense: "Residents and/or members of the community will be provided information about sex offenders under those circumstances when it is believed that such notification is necessary to prevent a person from being

victimized by the sex offender." A copy of this policy is provided as Ex. C.

28. Other than a court hearing dealing with the issue of notification by the Office of Adult Probation of members of the community with regard to an individual under the supervision of the Office of Adult Probation, there is no formal procedure afforded by the Office of Adult Probation for contesting the necessity of notification to members of the community regarding a person convicted of a sexual offense with whom they may have contact.

V. PUBLIC STATEMENTS REGARDING PERSONS REQUIRED TO REGISTER AS SEX OFFENDERS.

29. The following exhibits accurately reflect statements made in television broadcasts regarding "Megan's Law" or persons designated as "sex offenders."

Ex. I-1 *Tougher Megan's Law Approved* (WTNH television broadcast, May 2, 1998).

Ex. I-2 *Governor Signs Several Bills Into Law* (WTNH television broadcast, Aug. 10, 1998).

Ex. I-3 *Changes Coming to Megan's Law* (WTNH television broadcast, Sept. 30, 1998).

Ex. I-4 *Halloween Safety* (WTNH television broadcast, Oct. 30, 1998).

Ex. I-5 *State Ready to Put Sex Offender Registry on Internet* (WTNH television broadcast, Dec. 29, 1998).

Ex. I-6 *"Megan's Law" list hits the Web* (WVIT/MSNBC television broadcast, Jan. 1, 1999).

Ex. I-7 *Cops Meet to Discuss Missing Persons in Sex Offender Database* (WTNH television broadcast, Feb. 10, 1999).

Ex. I-8 *Megan's Law has real estate agents wondering what they have to disclose* (WTNH television broadcast, May 1, 1999).

Ex. I-9 *Senate gives final approval to Megan's Law bill* (WTNH television broadcast, June 7, 1999).

Ex. I-10 *Text of Gov. John G. Rowland's speech marking the end of the 1999 legislative session* (WTNH television broadcast, June 9, 1999).

30. The following exhibits are accurate copies of articles that have appeared in the press regarding "Megan's Law" or persons designated as "sex offenders."

Ex. J-1 *Family Sees Sex-Offender Bill Signed; "Megan's Law" A Reality*, Hartford Courant, May 31, 1995.

Ex. J-2 *Bill Targets Suspected Abductors*, Hartford Courant, March 1, 1996.

Ex. J-3 *30 Discuss Megan's Law*, Register Citizen, September 24, 1997.

Ex. J-4 *Confusion Causes Varied Access to Data on Sex Offenders*, Hartford Courant, October 10, 1997.

Ex. J-5 *"Megan's Law" and Questions Of Liability*, New York Times, December 14, 1997.

Ex. J-6 *Rallying for Tougher Megan's Law*, Hartford Courant, September 19, 1998.

Ex. J-7 *Publicizing Sex Offenders, State Legislator to Present TV Profiles*, Hartford Courant, October 13, 1998.

Ex. J-8 *Unmasking Sex Offenders*, Bristol Press, October 13, 1998.

Ex. J-9 *Officer Stresses Parent Awareness, Wants Less Focus on Molester Lists*, Hartford Courant, October 17, 1998.

Ex. J-10 *A Contest Focusing on Conduct, Secretary of the State Candidates Assail One Another*, Hartford Courant, October 28, 1998.

Ex. J-11 *Kids' Safety A Key Issue, Widlitz Defends Megan's Law Vote Puffer Has Decried*, Hartford Courant, October 29, 1998.

Ex. J-12 *Sex Offender List Available to All Parents*, Waterbury Republican-American, December 10, 1998.

Ex. J-13 *"Megan's Law": More Harm Than Good?*, Connecticut Law Tribune, December 21, 1998.

Ex. J-14 *Sex Offenders' Names To Be On Internet*, Hartford Courant, December 30, 1998.

Ex. J-15 *Sex offender registration goes online*, New Haven Register, December 30, 1998.

Ex. J-16 *Web Site Lists Sex Offenders; Debate Ensues*, Hartford Courant, January 2, 1999.

Ex. J-17 *Megan's Law Unfair*, Connecticut Law Tribune, January 11, 1999.

Ex. J-18 *Changes Needed In Megan's Law*, Hartford Courant, January 24, 1999.

Ex. J-19 *Many missing from Megan's Law registry*, Journal Inquirer, February 17, 1999.

Ex. J-20 *Megan's Law Effort Opposed*, Hartford Courant, April 14, 1999.

Ex. J-21 *Does Megan's Law need a reality check?*, Waterbury Republican-American, May 2, 1999.

Ex. J-22 *Forum to Explain Details of Megan's Law*, Hartford Courant, May 25, 1999.

Ex. J-23 *House Backs Expanding Megan's Law To Cover More Crimes*, Hartford Courant, June 2, 1999.

31. The following exhibits accurately reflect public statements made by members of the Connecticut General Assembly prior to passage of Public Act 98-111.

Ex. K *Senate Debate on Senate Bill 65, An Act Concerning the Registration of Sexual Offenders* (Apr. 28, 1998).

Ex. L *House of Representatives Debate on Senate Bill 65, An Act Concerning the Registration of Sexual Offenders* (May 2, 1998).

32. The following exhibits accurately reflect public statements made by members of the Connecticut General Assembly prior to passage of Public Act 99-183.

Ex. M *House of Representatives Debate on House Bill 6785, An Act Concerning the Registration of Sexual Offenders* (June 1, 1999).

Ex. N *Senate Debate on House Bill 6785, An Act Concerning the Registration of Sexual Offenders* (June 7, 1999).

Respectfully submitted,

BY: /s/ Ann M. Parrent
Ann M. Parrent
Fed. Bar No. ct16077
Jody L. Yetzer
Fed. Bar No. ct 18999
Connecticut Civil Liberties Union Foundation
32 Grand Street
Hartford, CT 06106
(860) 247-9823

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing has been mailed postage prepaid to Margaret Q. Chapple, Lynn D. Wittenbrink, Assistant Attorneys General, 110 Sherman Street, Hartford, CT 06105 this 9th day of July 1999.

/s/ Ann M. Parrent
Ann M. Parrent

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

JOHN DOE, on behalf of himself and all others similarly situated, et al.,	CIVIL NO. 3:99CV00314(RNC)
Plaintiffs,	
v.	JULY 9, 1999
DR. HENRY C. LEE, in his official capacity as Commissioner of Public Safety, et al.,	
Defendants.	

EXHIBITS TO LOCAL RULE 9(C)1 STATEMENT

REGISTRATION REQUIREMENT LETTER

Dear

Records provided to the Connecticut Department of Public Safety indicate that you have been convicted of one or more of the statutes relating to sex offenses which requires you to register as a Sex Offender. You may have previously registered with the Police Department or State Police Troop within the community, which you reside.

Effective October 1, 1998 Connecticut Public Act 98-111 requires you to **re-register** with the Connecticut Department of Public Safety. *Any registration you have previously made will become invalid.* Failure to comply with any or all of the following statutory registration requirements is a Class "D" Felony.

PA 98-111 requires that you:

- Register with the Department of Public Safety after October 1, 1998 at a time and place designated by the department.
- Submit to being fingerprinted
- Submit to being photographed
- Submit to providing a DNA sample if not already provided under 54-102g
- Provide the registry with a current address and notify the registry, in writing within five (5) days, if you should move to a new address. You will also be required to verify your address by mail periodically.

At time of registration a new photo and set of fingerprints will be taken. Additional information relative to

your specific registration requirements will be provided to you.

You are directed to report to the Department of Public Safety upon receipt of this letter within three (3) business days. The location of the registry site is indicated on the back side of this letter. Should you have any questions you may contact the Sex Offender Registry Unit at (860) 685-8060.

Sincerely,

/s/ Sgt. Kathleen A. Miller
Sgt. Kathleen A. Miller
Sex Offender Registry

[LOGO]

STATE OF CONNECTICUT

DEPARTMENT OF CORRECTION
OFFENDER CLASSIFICATION &
POPULATION MANAGEMENT UNIT
1151 East Street South
Suffield, Connecticut 06078

MEMORANDUM

To: Facility Contact Persons
Sex Offender Registration Procedures

From: Fred Levesque, Director
Offender Classification & Population Management

Date: 10/7/98

Subject: Revised Sex Offender Registration Procedure

Enclosed you will find a revised set of the policies for Sex Offender Registration. Please note the revision date on the bottom left corner dated 9/30/98. Please shred the previously issued procedures which were dated 9/18/98.

The following outlines the significant changes to the procedures:

Section 5A, #2, (page 4) indicates when using a two-part (jail file), the Sex Offender Registration checklist is placed on top of Section 1.

Section 6 (page 5), "Incarcerated Offender on Bond Awaiting Execution of Their Sentence" is a new section. Pursuant to the instructions of judicial authorities, the courts may convict an offender and stay the execution of the sentence while the offender is held on bond. The continuance mittimus will specify that a condition of the sentencing is that the offender agrees to provide the Department

of Correction with identifying factors and release to community registration information. The Department of Correction will obtain the identifying factors and complete the release to the community registration forms and forward same to the DPS-Sex Offender Registry. The Department will certify such actions are completed on Attachment I, "Sex Offender Certification Form", which is provided by the court with the continuance mittimus. If the offender refuses to provide the identifying factors or release information, this shall be noted on the certification form and our standard refusal procedures ARE NOT followed.

Section 7 (page 6), "Bond Out and Release from Court Procedures" is a new section. The Department of Correction will provide all pre-trial inmates being released to the community with Attachment H, "Inmate Release Notification Form". This form advises the inmate of the Public Act and that if they have been convicted of one of the identified offenses, in Connecticut or another jurisdiction, they should contact the DPS-Sex Offender Registry. As we anticipate the telephone number for the Registry may change to an 800 number in the future, we have not listed it on Attachment H. You may provide the current telephone number, 1-860-685-8060, to an inmate upon release.

Section 10B, #2 (page 7), indicates attachment G is now called the "Sex Offender Advisement of Registration Requirement Form". (It is the same form which was previously titled "Notice of Release of Sex Offender".) Attachment G is only completed for inmates discharging end of sentence. The change in title is included in all subsequent sections of the procedures.

Section 10B, #3, (page 7), indicates mental health information required on Attachment F, "Sex Offender Registration Form", is provided by the inmate (self-disclosure) and does not require contacting the Mental Health Unit.

Section 10B, #7, (page 8), specifies the inmate's name and number shall be placed on the back of the return receipt bottom corner.

Section 13, "Inmate Notification" (page 9), contains a new procedure. All inmates being released from the Department of Correction to include end of sentence, parole, bond or any other releasing mechanism shall be issued the "Inmate Release Notification Form", Attachment H.

Attachment A, under II, the word "attempt" was added to Criminal (53a-49).

Attachment B, Section II and Section IIIB, references change in title of Attachment G to "Sex Offender Advisement of Registration Requirement Form".

Attachment G, new title, "Sex Offender Advisement of Registration Requirement, Unconditional Release".

Attachment H, new form, "Inmate Release Notification Form".

Attachment I, "Sex Offender Certification Form" (refer to section 6 for procedure)

The Department of Public Safety Instructions for completing the DPS forms were purposely removed from the revised procedure packet.

UPDATES/CLARIFICATIONS

The Department of Public Safety does not want to be notified by the Department of Correction when an individual who had previously registered in the community is returned to a Department of Correction facility. As such, no change of address forms, as noted on Attachment F, have to be completed. If the offender wants to contact the DPS, provide him/her with the address of the DPS-Registry.

If an inmate has questions or claims that he does not meet the requirements for sex offender registration, advise him/her to contact their attorney or Inmates' Legal Assistance. Staff should not try to interpret the public act for the offenders.

Unless an inmate is convicted under 53-021, subsection 2, he/she does not meet the registry requirements. It is not unusual for the court to agree to a conviction for 53-021 without a subsection, even though details of the offense indicate sexual contact. The courts may only convict and sentence to the level specified by the police or the prosecutor in the charging documents.

The letters "M", "V" or "P", only refer to individuals convicted on or after 10/1/98.

ADDITIONAL ATTACHMENTS

1) Updated Facility Contact Person list dated 10/1/98.
2) Health Services Contact Person list dated 10/5/98.
3) Memorandum dated 10/1/98 to Records Specialists from Fred Levesque. It is strongly suggested that you review this memorandum and all relevant procedures with your Records staff.

As indicated previously, if you have any questions contact a member of the Megan's Law Committee. Please provide a copy of this memorandum and attachments to the Back-Up Person and any other relevant staff in your facility.

Thank you for your continued cooperation and assistance in these efforts.

Cc: Deputy Commissioner Tokarz
Deputy Commissioner Matos
Director Coyle, Security
Complex Wardens and Wardens
Records Specialists

TITLE: SEX OFFENDER REGISTRATION

1. **Policy**. The Department of Correction shall ensure that inmates are identified and processed who meet the criteria regarding registration of sex offenders.

2. **Authority and Reference**.

   A. Connecticut General Statutes 53-21(2), 53a-70, 53a-70a, 53a-70b, 53a-71, 53a-72a, 53a-72b, 53a-73a, 53a-86 (a) (2), 53a-87 (a) (2), 53a-196a, 53a-196b, 53a-8, 53a-48, 53a-49, or if intent to sexually violate or abuse the victim 53a-92, 53a-92a, 53a-94, 53a-94a, 53a-95, 53a-96, 53a-186, 54-97 and 54-102h.

   B. Public Act 98-111.

   C. Administrative Directive 9.3 – Admissions, Transfers and Discharges.

3. **Definitions**. For the purposes stated herein, the following definitions apply:

   Conviction. A judgment entered by a court upon a plea of guilty, a plea of nolo contendere or a finding of guilty by a jury or the court.

   Criminal offense against a victim who is a minor. Means (A) a violation of subsection (2) of section 53-21, subdivision (2) of subsection (a) of section 53a-70, subdivision (1), (4) or (8) of subsection (a) of section 53a-71, subdivision (2) of subsection (a) of section 53a-72a, subparagraph (A) or (D) of subdivision (1) of subsection (a) or subdivision (6) of subsection (a) of section 53a-73a, subdivision (2) of subsection (a) of section 53a-86, subdivision (2) of subsection (a) of section 53a-87, section 53a-196a or 53a-196b, (B) a violation of section 53a-92, 53a-92a, 53a-94, 53a-94a, 53a-95, 53a-96 or 53a-186 of the general statutes, provided the court makes a finding that at the time of the

offense, the victim was under eighteen years of age, or (C) a violation of any of the offenses specified in subparagraph (A) or (B) of this subdivision for which a person is criminally liable under section 53a-8, 53a-49 of the general statutes. For inmates convicted of one of these offenses on or after 10/1/98, a code of "M" or language verifying victim was a minor, will be noted on the mittimus and docketed as such.

DNA (deoxyrihonucleic acid) databank. A registry of identification hereditary characteristics that uses an individual's body fluids or material such as blood.

Facility Contact Person. The Counselor Supervisor/Classification Counselor designated at the facility to coordinate matters related to requirements under Public Act 98-111.

Identifying factors. Current fingerprints, current photographs that absolutely match the inmate, DNA (deoxyribonucleic acid) and a description of any other identifying characteristics as required by the Commissioner of Public Safety. The fingerprint card shall have an inmate name and DOC identification number listed on the card.

Release to the Community. The release of an inmate from the legal custody of the Department of Correction to include release to parole.

RT50 screen for DNA update:

- **DNA eligible Y or N.** If the inmate meets the criteria for a DNA sample, then the answer would be "Y" for yes. If the inmate does not meet the criteria for a DNA sample, then the answer would be "N" for no.
- **DRWN** means drawn. The actual date the sample was drawn by Health Services. This date is on the pink copy of the DNA Databank Submission Form.

- **CONFM** means confirmed. This date reflects the receiving of the DNA Databank Submission form (yellow copy) from the State Police Forensic Science Lab.

Sex Offender. A person convicted of charges identified in Public Act 98-111.

Sex Offender as Imposed by the Court. Those convicted of a felony that is found by the sentencing court to have been committed for sexual purposes. For inmates convicted of one of these offenses on or after 10/1/98, a code of "P" or language verifying the offense was committed for sexual purposes, will be noted on the mittimus and docketed as such.

Sex Offender Registration. A process associated with the Department of Correction that maintains information pertaining to those inmates who meet the criteria in Public Act 98-111.

Sex Offender Registration Checklist. A Department of Correction form that is used as a guide in tracking the Sex Offender Registration processes.

Sex Offender Registration Log Book (DNA). A permanent hardbound volume maintained at each facility with pre-numbered pages used to record the DNA blood draw of sex offenders in sequential order by date, to include inmate name and number, etc. (See sample attached.)

Sex Offender Registration Log Book (Release to Community). A permanent hardbound volume maintained at each facility with pre-numbered pages used to record the community registration of sex offenders in sequential order by date, to include inmate name and number, etc. (See sample attached.)

Sexually violent offense. A violation of section 53a-70, except subdivision (2) of subsection (a) of said section, 53a-70a, 53a-70b, 53a-71, except subdivision

(1), (4) or (8) of subsection (a) of said section, 53a-72a, except subdivision (2) of subsection (a) of said section, 53a-72b or 53a-73a, except subparagraph (A) or (D) of subdivision (1) of subsection (a) of said section, or subdivision (6) of subsection (a) of said section, or of section 53a-92 or 53a-92a of the general statutes, provided the court makes a finding that the offense was committed with intent to sexually violate or abuse the victim, of (B) a violation of any of the offenses specified in subparagraph (A) of this subdivision for which a person is criminally liable under 53a-8, 53a-48, or 53a-49 of the general statutes. For inmates convicted of one of these offenses on or after 10/1/98, a code of "V" or language verifying the offense was a sexually violent offense, will be noted on the mittimus and docketed as such.

4. **Registration of Sex Offenders for DNA Blood Draw.**

   A. **Criteria.** An inmate who is convicted of one or more of the following:

      1. Criminal Offense Against a Minor – refer to Attachment A.

      2. Sexually Violent Offense – refer to Attachment A.

      3. Any felony conviction that the court finds was committed for sexual purposes.

      4. A violation of any of the offenses specified in Attachment A for which an inmate is criminally liable under section 53a-8, 53a-48 or 53a-49.

5. **Unit Responsibility.** A Classification Counselor shall review any inmate that is admitted to a level 3, 4, or 5 facility to determine if the inmate meets the criteria in section 4. If the inmate does not meet the

criteria for Sex Offender Registration, the Classification Counselor shall ensure that the RT50 screen is updated with an "N".

A. **Identification.** Identification shall be determined by reviewing the RT50 screen for past blood draws, judgement mitts, prior criminal history (i.e. prior judgement mitts, rap sheet, prior classification scores). Once identified, the Classification Counselor or the Facility contact Person shall ensure the following:

   1. Update the RT50 screen with a "Y".

   2. The Sex Offender Checklist (Attachment B) shall be initialed and placed on top of Section 3 of the master file. When using a two-part (jail file) file, place the Sex Offender Registration Checklist on top of Section 1. All other related Sex Offender Registration documents shall be placed under the Sex Offender Registration Checklist.

   3. An Inmate Notification Form (Attachment C) is completed, signed by the inmate and witnessed by a Classification Counselor. A Classification Counselor shall give a copy to the inmate. The original Inmate Notification Form shall be placed in Section 3 of the master file.

   4. Process the DNA Databank Submission Form (Attachment D):

      a. Complete Section I of the DNA Databank Submission Form.

      b. Send a copy of the DNA Databank Submission Form to the Facility Contact Person.

c. Facility Contact Person shall maintain a log book for all DNA Databank Submission forms for tracking. (see sample attached)

d. Original DNA Databank Submission Form shall be brought to the Health Service Unit.

e. The Health Services Unit shall complete Section II and Section III of the DNA Databank Submission Form. The Health Services Unit shall follow existing procedures pertaining to the DNA Databank Submission Form.

f. The Health Services Unit shall ensure that the courier receipt and the pink copy of the DNA Databank Submission Form are hand delivered to the Facility Contact Person for placement in Section 3 of the master file.

g. The Facility Contact Person shall update the Sex Offender Registration Checklist, the log book, and ensure the RT50 screen is updated to reflect date of blood draw.

h. Confirmation regarding the DNA Databank Submission Form from the State Police (yellow copy) shall be sent to the Facility Administrator. The Facility Administrator shall send the Confirmation to the Facility Contact Person who shall:

1. Update the Sex Offender Registration Checklist and the log book.

2. Remove the pink DNA Databank Submission form and attached courier receipt from Section 3 of the

master file and replace with the yellow DNA Databank Submission Form. The pink copy and the courier receipt shall be purged after the yellow copy is placed in the master file.

3. Update information on the RT50 screen to reflect the date confirmation (yellow copy) is received.

6. **Incarcerated Offender on Bond Awaiting Execution of Their Sentence.** In some cases, the court will convict an offender and stay execution of the sentence with the anticipation they will not return to the Department of Correction upon sentencing. In these cases, the court will provide the Department of Correction with a Sex Offender Certification Form (Attachment I), which will be attached to the continuance mittimus. The continuance mittimus will specify that a condition of the sentencing is that the defendant provide identifying factors and release to community registration information to the Department of Correction. Upon receipt of the continuance mittimus and the Sex Offender Certification Form, the Records Staff shall immediately forward a copy of the continuance mittimus and the original Sex Offender Certification Form to the Facility Contact Person. The Records Staff shall place the original continuance mittimus in Section 4 of the master file. The Facility Contact Person shall follow the procedures for obtaining a DNA blood sample as outlined in Section 5 and complete the Sex Offender Registration Form (Attachment F), as outlined in Section 10. Once these procedures have been completed, the Facility Contact Person shall complete the Sex Offender Certification Form and make two copies. One copy shall be given to the offender. The offender shall be instructed to bring the copy to the court. Another copy shall be placed in Section 3 of the master file. The original Sex Offender Certification

Form shall be delivered to the Records Staff. The Records Staff shall ensure the original Sex Offender Certification Form is sent to the court attached to a copy of the continuance mittimus with the offender on the next court date.

Please note, if an offender does not agree to the DNA Blood Draw or refuses to provide information to complete the Sex Offender Registration form (Attachment F), the refusal procedures for DNA Blood Draw and Release to the Community (as outlined in Sections 9 and 11) shall not be followed. The Facility Contact Person shall note the offender's refusal on the Sex Offender Certification Form.

7. **Bond Out/Release from Court Procedures.** All pre-trial inmates who are released to the community shall be issued the Inmate Release Notification Form (Attachment H). In the event there was a DNA Blood draw prior to the inmate being released on bond, the Facility Contact Person shall notify the Department of Public Safety-Sex Offender Registry telephonically and inform them that the inmate has bonded out and that the Sex Offender Registration process was not completed.

   In the event that the inmate is released from court without the Sex Offender Registration process being completed, the Facility Contact Person shall notify the Department of Public Safety-Sex Offender Registry telephonically.

8. **Changes in Conviction.** The Classification Counselor shall be aware that during the period of incarceration, changes in judgement mitts may occur; for example, a sentence modification may result in the need to purge the blood draw or it may change when the release to the community registration should occur. Records staff shall notify the Classification Counselor if

there is a change in conviction. If a blood draw needs to be purged, the Classification Counselor shall notify the Facility Contact Person who shall notify the Central Office Health Services contact person. The Sex Offender Registration Checklist and the RT50 screen shall be updated as appropriate.

9. **Inmate Refusal for DNA Blood Draw.** An inmate shall satisfy the conditions of the DNA testing guidelines set forth in this policy prior to release from the custody of the Department of Correction.

   Should an inmate refuse testing, the Correctional Hospital Nursing Supervisor or designee, shall have the inmate sign the DNA Refusal Form (Attachment E) and notify the Facility Administrator. Health Services shall forward the DNA Refusal Form to the Facility Contact Person. The DNA Refusal Form shall be placed in Section 3 of the master file. The Facility Administrator shall direct the Facility Contact Person to meet with the inmate to review the testing procedure and ensure the inmate has correct information regarding the purpose of the DNA testing and the requirements of the law. The Facility Contact Person shall advise the inmate that upon any further refusal, the Department of Correction shall make a request to the Office of the Attorney General to pursue a court order authorizing compulsory taking of a blood sample. A note of this meeting shall be entered on the Sex Offender Registration Checklist (Attachment B) located in Section 3 of the master file. After this counseling session, if the inmate consents to the DNA test, the Facility Administrator and Correctional Hospital Nursing Supervisor shall be notified, and the inmate scheduled for phlebotomy on the next regularly scheduled laboratory day. If the inmate again refuses, the Facility Contact Person shall notify the Central Office Health Services Contact Person for possible referral to the Office of the Attorney General.

10. **Registration of Sex Offender for Release to the Community.** A record specialist shall, during the 45-day end of sentence discharge review, notify the Facility Contact Person of the name of the inmate required to register. A record specialist shall also notify the Facility Contact person if an inmate is granted parole.

A. Criteria. An inmate who is convicted of one or more of the following:

1. Criminal Offense against a Minor-refer to Attachment A.

2. Sexually Violent Offense-refer to Attachment A.

3. Any felony conviction that the court finds was committed for sexual purposes.

4. A violation of any of the offenses specified in Attachment A for which an inmate is criminally liable under section 53a-8, 53a-48 or 43a-49.

B. The Facility Contact Person shall ensure the following:

1. A separate log book is maintained on all registration actions.

2. The Sex Offender Registration Form (Attachment F – previously titled Sexual Assault Convict Registration Form) is completed. The Sex Offender Advisement of Registration Requirement Form (Attachment G) is only completed for those inmates who are discharging end of sentence. Attached to these forms shall be a full set of current fingerprints and two current photographs that absolutely match the inmate.

3. The Sex Offender Registration Form (Attachment F) requires mental health information for a violent sex offender. This information should be provided by the inmate (self-disclosure) and does not require contacting the Mental Health Unit.

4. The original Sex Offender Registration Form (Attachment F), current fingerprints and two current photographs shall be sent to the Department of Public Safety – Sex Offender Registry by certified mail not less than 10 and no more than 30 days prior to the inmate's scheduled release date. If the inmate is discharging end of sentence the original Sex Offender Advisement of Registration Requirement Form (Attachment G) shall be sent with the Sex Offender Registration Form (Attachment F).

5. A copy of the Sex Offender Advisement of Registration Requirement Form (Attachment G) shall be given to the inmate when applicable.

6. A copy of the Sex Offender Registration Form, a copy of the Sex Offender Advisement of Registration Requirement Form, and the receipt for certified mail shall be placed in Section 3 of the master file. The receipt for certified mail shall be stapled to the Sex Offender Registration Form.

7. Place the Facility Contact Person's name and address on the return receipt (green card). The inmate's name and number shall be placed on the back of the return receipt bottom corner. When received, the certified mail return receipt shall be placed in Section 3 of

the master file and stapled to the Sex Offender Registration Form. If the inmate is transferred during this process, the return receipt shall be forwarded to the Facility Contact Person where the inmate is incarcerated.

8. If the return receipt has not been received within ten business days, the Facility Contact Person shall contact the Department of Public Safety – Sex Offender Registry.

9. Update the Sex Offender Registration Checklist.

11. **Inmate Refusal of Sex Offender Release to Community Registration.** The Facility Contact person shall determine if an inmate is being released to parole or end of sentence.

If the inmate refuses to complete the Sex Offender Registration form when being released to parole the Facility Contact Person shall notify the Board of Parole, who shall advise of any changes in status.

If the inmate refuses to complete the Sex Offender Registration Form when being discharged to end of sentence and the inmate has statutory good time, the Facility Contact Person shall notify the Director of Offender Classification and Population Management to determine further action. If there is no statutory good time, the Sex Offender Registration form and the Sex Offender Advisement of Registration Requirement Form shall be completed with the available information, signed and dated by the Facility Contact Person. It shall be noted on the forms that the inmate refused to complete both forms. The original Sex Offender Registration Form and the original Sex Offender Advisement of Registration Form shall be forwarded to the Department of Public Safety – Sex Offender Registry. The Facility Contact person shall

place a copy of the Sex Offender Registration Form and the Sex Offender Advisement of Registration Requirement Form in Section 3 of the master file and update the Sex Offender Registration Checklist

12. **Readmission.** Upon readmission of a sex offender, the Classification Counselor shall review the Discharge Section of the master file for the previous Sex Offender Checklist and update the new Sex Offender Registration Checklist (DNA is only required to be drawn once). The DNA Databank Submission Form shall remain in Section 3 of the master file with the new Sex Offender Registration Checklist. The Classification Counselor shall make a copy of both forms and forward them to the Facility Contact Person. All previous forms, to include the Sex Offender Registration Checklist, the Sex Offender Registration Form and the Inmate Notification Form shall remain in the Discharge Section of the master file.

13. **Inmate Notification.** Each Facility Administrator shall notify the inmate population of the requirements of the Registration of Sex Offenders by placing a notice of such in each inmate housing unit. All inmates who are being released from the Department of Correction to include end of sentence, parole, bond, or any other releasing mechanism shall be issued the Inmate Release Notification form (Attachment H).

14. **Reports and Monitoring.** To provide assistance in implementing department policy concerning sex offender registration, the Research Unit shall generate a report that lists each inmate in that facility who meets the criteria for sex offender registration and shall submit such report to each Facility Administrator and Facility Contact Person on a monthly basis. The Research Unit shall also provide a report that

lists each inmate in that facility who meets the criteria for sex offender registration and is within 120 days of release and shall submit such report to the Facility Administrator and the Facility Contact Person on a monthly basis. The Research Unit shall maintain copies of the reports sent to each facility. The Sex Offender Registration process shall be monitored periodically by staff of the Offender Classification & Population Management Unit, the Health Services Unit and the Research Unit.

ATTACHMENT A

Registration of Sex Offenders for DNA Blood Draw/Release to the Community

I. <u>Criminal Offense Against a Minor (Imposes a 10 year registration requirement)</u>

"M"

53-21(2)	Risk of injury to or impairing moral of children	(CF)
53a-70(a)(2)	Sexual Assault 1st	(BF)
53a-71(a)(1)	Sexual Assault 2nd	(CF)
53a-71(a)(4)	Sexual assault 2nd	(CF)
53a-71(a)(8)	Sexual Assault 2nd	(CF)
53a-72a(a)(2)	Sexual Assault 3rd	(DF)
53a-73a(a)(6)	Sexual Assault 4th	(AM)
53a-73a(a)(1)(D)	Sexual Assault 4th	(AM)
53a-73a(a)(1)(A)	Sexual Assault 4th	(AM)
53a-86(a)(2)	Promoting Prostitution 1st	(BF)
53a-87(a)(2)	Promoting Prostitution 2nd	(CF)
53a-196a	Employing a minor in an obscene performance	(AF)
53a-196b	Promoting a minor in an obscene performance	(BF)

REV 9/30/98

<u>or if the court finds on or after 10/1/98 at the time of the offense the victim was under 18 years of age:</u>

53a-92	Kidnapping 1st	(AF)
53a-92a	Kidnapping 1st	(AF)
53a-94	Kidnapping 2nd	(BF)
53a-94a	Kidnapping 2nd	(BF)
53a-95	Unlawful Restraint 1st	(DF)
53a-96	Unlawful Restraint 2nd	(AM)
53a-186	Public Indecency	(BM)

<u>or any of the above where the person is criminally liable under</u>:

53a-8	Criminal liability for acts of another
53a-48	Conspiracy
53a-49	Criminal attempt

II. <u>Sexually Violent Offense (Imposes a lifetime registration requirement unless otherwise released from the obligation)</u>

"V"

53a-70	Sexual Assault 1st	(BF)
53a-70a	Aggravated Sexual Assault 1st	(BF)
53a-70b	Sexual Assault in spousal or cohabiting relationship	(BF)
53a-71	Sexual Assault 2nd	(CF)
53a-72a	Sexual Assault 3rd	(DF)
53a-72b	Sexual Assault 3rd with a firearm	(DF)
53a-73a	Sexual Assault 4th	(AM)

REV 9/30/98

Except the following (which are classified as Criminal Offenses Against a Minor)

53a-70(a)(2)	Sexual Assault 1st	(BF)
53a-71(a)(1)	Sexual Assault 2nd	(CF)
53a-71(a)(4)	Sexual Assault 2nd	(CF)
53a-71(a)(8)	Sexual Assault 2nd	(CF)
53a-72a(a)(2)	Sexual Assault 3rd	(DF)
53a-73a(a)(1)(A)	Sexual Assault 4th	(AM)
53a-73a(a)(1)(D)	Sexual Assault 4th	(AM)
53a-73a(a)(6)	Sexual Assault 4th	(AM)

or if the court finds on or after 10/1/98 an intent to sexually violate or abuse the victim:

53a-92	Kidnapping 1st	(AF)
53a-92a	Kidnapping 1st	(AF)

or any of the above where the person is criminally liable under:

53a-8	Criminal liability for acts of another
53a-48	Conspiracy
53a-49	Criminal attempt

III. Any felony that the court finds on or after 10/1/98 was committed for sexual purposes.

"P"

REV 9/30/98

ATTACHMENT B – SEX OFFENDER REGISTRATION CHECKLIST

Originating Facility _____ Date _____
Inmate Name _____ Inmate Number _____

SECTION I: REGISTRATION DNA BLOOD DRAW

A.

State Statute/Offense Title_____
If convicted on or after 10/1/98 circle: **M V P**

Inmate Notification Form completed Date _____
Completed Section 1 of the DNA Databank Submission Form Date _____
DNA Databank Submission Form sent to the Health Services Unit Date _____
Copy of DNA Databank Submission Form and Inmate Notification Form sent to Facility Contact Person Date _____

Completed by

_____ _____ _____
Print Name Signature Date

B.

Pink copy of the DNA Databank Submission Form and courier receipt placed in section 3 of the master file.
Completed by

_____ _____ _____
Print Name Signature Date

REV 9/30/98

Yellow copy of the DNA Databank Submission Form placed in section 3 of the master file upon receipt from the CT State Police. Pink copy [illegible]
Completed by

Print Name	Signature	Date

SECTION II: REGISTRATION RELEASE TO COMMUNITY

Sex Offender Registration Form, Sex Offender Advisement of Registration Requirement Form (Only for inmates discharging end of sentence), two photographs and fingerprints completed and mailed to Department of Public Safety – Sex Offender Registry. Receipt for certified mail placed section 3 of the master file stapled to the Sex Offender Registration Form
Completed by

Print Name	Signature	Date

Certified Mail Return Receipt (green card) placed in section 3 of the master file stapled to the sex Offender Registration Form.
Completed by

Print Name	Signature	Date

SECTION III: INMATE REFUSAL
A. Inmate Refusal of DNA Draw

Inmate refused DNA testing. DNA Refusal Form placed in section 3 of the master file.
Completed by

Print Name	Signature	Date

REV 9/30/98

The Facility Contact Person met with the inmate to review the DNA testing procedure.
Completed by

Print Name	Signature	Date

Facility Contact Person notified Central Office Health Services Contact Person if inmate still refuses DNA testing.
Completed by

Print Name	Signature	Date

Additional actions taken regarding DNA testing refusal. (If additional space is needed, attach to checklist)

_____
Completed by

Print Name	Signature	Date

B. Inmate Refusal Sex Offender Registration
Sex Offender Registration Form and Sex Offender Advisement of Registration Requirement Form completed without residence information and forwarded to the Department of Public Safety – Sex Offender Registry.
Completed by

Print Name	Signature	Date

Additional actions taken _____

REV 9/30/98

ATTACHMENT C

INMATE NOTIFICATION FORM
SUMMARY REGISTRATION AGREEMENT
CONNECTICUT DEPARTMENT OF CORRECTION

TO:

FROM:

DATE:

RE: PUBLIC ACT 98-111

In accordance with the requirements of Public Act 98-111, an act concerning the registration of sex offenders, the Connecticut Department of Correction hereby notifies you of the following obligations:

1) Upon admission, a blood sample to be used for Deoxyribonucleic Acid (DNA) identification analysis shall be taken from you as you meet the criteria of Public Act 98-111. I understand that if I refuse, the Connecticut Department of Correction may request that the Attorney General's Office seek a court order authorizing the use of force, if necessary, to obtain such blood sample.

2) Prior to discharge, you will be required to submit to a photograph, fingerprints and provide information regarding residence to be used to complete the Department of Public Safety Sex Offender Registration Form.

3) Since you meet the criteria of Public Act 98-111, you are being issued a copy of the Public Act and will be responsible for all obligations required upon your release from the custody of the Department of Correction.

4) In the event that you are released from the Connecticut Department of Correction (i.e., bond out, release from court, release to parole, end of sentence or any other releasing mechanism) and all the requirements for registration have not been completed (DNA blood draw, photograph, fingerprints and Release to the Community Registration forms), you are required to contact the Department of Public Safety-Sex Offender Registry, pursuant to Public Act 98-111, to complete the registration process.

I acknowledge being advised and issued a copy of Public Act 98-111.

Inmate Signature	Date
Staff Witness	Date

Check One

( ) Inmate refused to sign, but accepted a copy of Public Act 98-111.

( ) Inmate refused to sign. Copy of Public Act 98-111 sent to inmate in a sealed envelope via regular institutional mail.

10/16/98

ATTACHMENT D

CONNECTICUT DEPARTMENT OF CORRECTION

DNA DATABANK SUBMISSION FORM

Date: _____

SECTION I:
To Be Completed By The Holding Facility:

Submitting Agency: Department of Correction/Facility:

Inmate Name: _____
Last First

Inmate Number: _____ SPBI Number: _____

Social Security Number: ☐☐☐-☐☐-☐☐☐☐ ☐ Not Known

Date of Birth: _____ Gender: ☐ Male ☐ Female

Race: ☐ White ☐ Black ☐ Hispanic ☐ Asian
☐ Native American ☐ Other

State Statute: _____ Offense Title: _____

Is Offense: ☐ Against Minor (M) ☐ Violent (V)
☐ Sexual Purpose (P)

Date of Discharge: _____

Staff Member Who Completed Form: _____ _____
Print Name Signature

_____

SECTION II:
To Be Completed By Health Services Staff:

Date of Sample Collection: _____

Sample Collected By: _____

_____

SECTION III:
To Be Completed By Staff Assigned To Transmit Samples:

Date Transmitted: _____

Hand Deliver Courier Receipt to Facility Contact Person

Completed By: _____ _____

_____

SECTION IV:
To Be Completed By Connecticut State Police (CSP):

Date Received By CSP: _____

Submitting Agency Case #: _____

Laboratory Case #: _____

INSTRUCTIONS: White Copy to State Police.

Yellow Copy to State Police for completion and return to D

Pink Copy temporarily placed in inmate master file pending return of yellow copy. Purged after yellow copy filed.

_____

ATTACHMENT E

CONNECTICUT DEPARTMENT OF CORRECTION

DNA REFUSAL FORM

INMATE NAME: _____

INMATE NUMBER: _____

DATE OF BIRTH: _____

SEX: _____

FACILITY: _____

I understand that Public Act 98-111 requires that I have a sample of my blood taken for DNA (Deoxyribonucleic Acid) analysis. I have refused to have a sample of my blood taken for such DNA analysis. I understand that as a result of my refusal, the Connecticut Department of Correction may request that the Attorney General's Office seek a court order authorizing the use of force, if necessary, to obtain such blood sample.

INMATE SIGNATURE:

_____ DATE: _____

WITNESS SIGNATURE:

_____ DATE: _____

WITNESS SIGNATURE:

_____ DATE: _____

* Two (2) witnesses MUST sign the DNA refusal form.

Instructions: White Copy – Inmate
Yellow Copy – Master File
Pink Copy – Health Record

( ) Inmate refused to sign DNA refusal form and accepted a copy.

( ) Inmate refused to sign DNA refusal form and did not accept a copy.

Rev. 09/03/98

ATTACHMENT F

State of Connecticut
Department of Public Safety

Sex Offender Registration Form

☐ Initial Registration ☐ Change of Address *(Registering agency personnel must print or type all entries)*

Last Name	First Name	Middle Initial

Current or Intended Address *(No P.O. boxes)* & other identifying information

Number & Street	City or Town	Apt # (if any)	Zip Code

List Any Alias or Any Other Name(s) Used	Visible Scars, Marks, Tattoos

Conviction/Adjudication Date	Release Date	Court Name/Location/State	Current Status (✓ if applicable) ☐ On Probation ☐ On Parole

SPBI Number	DOB	Race (check all that apply) ☐ White ☐ Asian ☐ Hispanic ☐ Black ☐ Native American ☐ Other

CT/DOC Inmate Number	Sex	Height	Weight	Hair Color	Eye Color	Skin Complexion/Tone

The person named above was convicted or found not guilty by reason of mental disease or defect of:(✓ *all that apply*)

(Public Act 98-111 Section 2) which includes one of the following crimes against a victim who was a minor : (Code M)

Sections ☐ 53-21(2); ☐ 53a-70(a)(2); ☐ 53a-71(a)(1), (a)(4), or (a)(8); ☐ 53a-72a (a)(2) ☐ 53a-73a(a)(1)(A), (a)(1)(D) or (a)(6); ☐ 53a-86(a)(2) ☐ 53a-87(a)(2); ☐ 53a-196a ☐ 53a-196b; or

One of the following crimes and the court finds that at the time of the offense the *victim was under the age of 18 years:*

☐ 53a-92; ☐ 53a-92a; ☐ 53a-94; ☐ 53a-94a; ☐ 53a-95; ☐ 53a-96 ☐ 53a-186; or

(Public Act 98-111 Section 3) a sexually violent offense, such as one or more of the following crimes: (CodeV)

☐ 53a-70; *except (a)(2)* ☐ 53a-70a; ☐ 53a-70b ☐ 53a-71 *(except (a)(1), (4) & (8)* ☐ 53a-72a; (except (a)(2) ☐ 53a-72b ☐ 53a-73a; *except (a)(1)(A), (a)(1)(D), or (a)(6)* ☐ 53a-92; or ☐ 53a-92a;

Has Offender Received Mental Health Treatment ? *(violent sex offenders only)* ☐ Yes ☐ No If "Yes" When & Where ?

(Mental Health Information Is Not Subject To Public Disclosure)

(Public Act 98-111 Section 4) was a person who:

☐ Was *convicted in another jurisdiction* of any crime, the essential elements of which are substantially the same as any of the crimes listed above, or of

(Public Act 98-111 Section 5) was a person who was convicted of: (Code P)

☐ Any felony that the court finds was committed for sexual purposes and who is *required by the court* upon release into the community to register with the Commissioner of Public Safety

Check all tasks performed: ☐ Photograph Taken ☐ Fingerprints Taken ☐ DNA Sample Obtained

Name & Title	*Badge Number If Applicable*	*Date*

Name/Address of Registering Agency	*Agency Telephone*

Signature of Registrant	Date of Registration

A full registration requires all of the following: completion of this form, a full set of fingerprints and a photograph taken at the time of registration and a blood sample taken for the purposes of DNA analysis

102

Failure to Complete ALL Registration Requirements is a Class D Felony

Send To: Department of Public Safety -- Sex Offender Registry P.O. Box 2794 Middletown, CT 06457-----

Who Must Register As a Sex Offender in Connecticut?

Pursuant to the below listed sections of Public Act 98-111, the following persons must register in Connecticut as a sex offender if they are:

Public Act 98-111 Sec. 2 (for a period of 10 years)

A person who was released into the community on or after October 1, 1998, and has been convicted or found not guilty by reason of mental disease or defect of a criminal offense listed below against a *victim who was a minor*:

Sections [ ] 53-21(2);
[ ] 53a-70(a)(2);
[ ] 53a-71(a)(1), (a)(4), or (a)(8);
[ ] 53a-72a(a)(2)
[ ] 53a-73a(a)(1)(A), (a)(1)(D) or (a)(6);
[ ] 53a-86(a)(2)
[ ] 53a-87(a)(2);
[ ] 53a-196a
[ ] 53a-196b; or

A person who has been convicted or found not guilty by reason of mental disease or defect of any of the following crimes:

[ ] 53a-92; [ ] 53a-94; [ ] 531-95; [ ] 53a-186; or
[ ] 53a-92a; [ ] 53a-94a; [ ] 53a-96

the time of the offense or any of the foregoing if there is criminal liability pursuant to Sections 53a-8, /53a-48 or 53a-49, or

Public Act 98-111 Sec. 3 (for a period of not less than 10 years)

A person who was released into the community on or after October 1, 1988, and has been convicted or found not

guilty by reason of mental disease or defect of a *sexually violent offense as listed below*:

[ ] 53a-70; *except (a)(2)*
[ ] 53a-71 *(except (a)(1), (a)(4) & (a)(8)*
[ ] 53a-70a;
[ ] 53a-72a; (except (a)(2)
[ ] 53a-70b
[ ] 53a-72b

[ ] 53a-73a; *except (a)(1)(A), (a)(1)(D), or (a)(6)*
[ ] 53a-92; or
[ ] 53a-92a; provided the court makes a finding that the offense was committed with the intent to sexually violate or abuse the victim; or a was [sic] violation of any of the offenses specified above for which a person is criminally liable under Sections 53a-8, 53a-48, 53a-49, of the Connecticut General Statutes; or

Public Act 98-111 Sec. 4

A person who has been convicted or found not guilty by reason of mental disease or defect in a federal or military court or in any foreign jurisdiction of any crime, the *essential elements of which are substantially the same* as any of the crimes listed above; or

Public Act 98-111 Sec. 5

A person who has been convicted or found not guilty by reason of mental disease or defect in this state on or after October 1, 1998, of any felony that the court found was *committed for sexual purposes* and is required by the court upon release into the community to register with the Commissioner of Public Safety as required by law.

Important Information Concerning Public Act 98-111

"Registrant" means a person required to register under Section 2, 3, 4, or 5 of this act. (PA 98-111Sec. 1)

For registration purposes, the term **"Conviction"** means a judgment entered by a court upon a plea of guilty, a plea of nolo contendere or a finding of guilty by a jury or the court. (Public Act 98-111 Sec 1.)

"Identifying factors" means fingerprints, photographs, and a description of any other identifying characteristics as may be required by the Commissioner of Public Safety. The commissioner shall also require a sample of the registrant's blood taken for a DNA (deoxyribonucleic acid) analysis, unless such sample has been previously obtained in accordance with Section 53a-102g of the general statutes. (Public Act 98-111 Sec. 1)

A person required to register under Section 3 of Public Act 98-111 shall be required to maintain his registration for not less than ten years from the date of his release into the community, after which he may apply to the court in which he was convicted or found not guilty by reason of mental disease or defect for release from the obligation to register (Public Act 98-111 Sec. 6)

The Department of Public Safety, state police troops and local police departments shall not disclose the identity of any victim of a crime committed by a registrant or treatment information provided to the registry pursuant to this act except to government agencies for bona fide law enforcement or security purposes. (Public Act 98-111 Sec. 9)

The Department of Public Safety shall verify the address of each registrant by mailing a nonforwardable verification for the registrant at his last reported address. . . . Each person required to register under Section 2 or 5 of this act shall have his address verified in such a manner every ninety days after his initial registration date. Each person required to register under Section 4 of this act shall have his address verified in such manner either annually on the anniversary of his initial registration date or every 90 days after his initial registration date depending upon whether, after such initial registration, he is subject to the requirements of Section 2 or Section 3, respectively, of this Act. . . . (Public Act 98-111 Sec. 8)

ATTACHMENT G

State of Connecticut
Department of Public Safety

Sex Offender Advisement of Registration Requirement
Unconditional Release

ne Commissioner of Public Safety, please be advised that:

t Name	First Name	Middle	Date of Release Into Community	SPBI Number

eleased to reside at the following address

nber & Street *(No P.O. Box)*	City/Town	ZIP Code

person named above was convicted or found not guilty by reason of mental disease or defect of:
all that apply)

iblic Act 98-111 Section 2) which includes one of the following crimes against *a victim who was a minor : (Code M)*

tions
- ☐ 53-21(2);
- ☐ 53a-70(a)(2);
- ☐ 53a-71(a)(1);, (a)(4), or (a)(8)
- ☐ 53a-72a (a)(2);
- ☐ 53a-73a(a)(1)(A); (a)(1)(D) or (a)(6);
- ☐ 53a-86(a)(2);
- ☐ 53a-87(a)(2);
- ☐ 53a-196a;
- ☐ 53a-196b; or

of the following crimes and the court finds that at the time of the offense the *victim was under the age of 18 years:*

- ☐ 53a-92;
- ☐ 53a-92a;
- ☐ 53a-94;
- ☐ 53a-94a;
- ☐ 53a-95;
- ☐ 53a-96; or
- ☐ 53a-186;

blic Act 98-111 Section 3) a sexually violent offense, such as one or more of the following crimes: (CodeV)

- ☐ 53a-70; *except (a)(2)*
- ☐ 53a-70a;
- ☐ 53a-70b;
- ☐ 53a-71; *except (a)(1), (4) & (8)*
- ☐ 53a-72a; except (a)(2)
- ☐ 53a-72b;
- ☐ 53a-73a; *except (a)(1)(A), (a)(1)(D), or (a)(6)*
- ☐ 53a-92;
- ☐ 53a-92a;

Offender Received Mental Health Treatment ? *(violent sex offenders only)* ☐ Yes ☐ No If "Yes" When/Where ?

(Mental Health Information Is Not Subject To Public Disclosure)

lic Act 98-111 Section 4) was a person who:

☐ Was *convicted in another jurisdiction* of any crime, the essential elements of which are substantially the same as any of the crimes listed above, or of

lic Act 98-111 Section 5) was a person who was convicted of: *(Code P)*

☐ Any felony that the court finds was committed for sexual purposes and who is *required by the court* upon release into the community to register with the Commissioner of Public Safety

e informed the person identified above of the obligation to register within three days with the Commissioner of Public ty for a period of ten years following the date of his or her release date or until otherwise released from such obligation ccordance with Sec. 6 of Public Act 98-111, and also of the obligation that whenever this offender changes address, he ie shall provide the commissioner with written notice of any such change within five days and shall also register with ppropriate law enforcement agency if he moves to another state. This person shall be provided a copy of this form.

ying Official	Releasing Organization/Agency
Signature *Title* *Date*	

nowledge receipt of this form by signing below:

Signature of Registrant *Date*

694-C2 (New 9/29/98)

Notice to Registrants

As a person who has been convicted of a crime as specified in Public Act # 98-111 as indicated on the front of this form or as a person who is otherwise required to register with the Sex Offender Registry, you must report to a Connecticut State Police location as indicated below and comply with the registration requirements of Public Act 98-111, which requires the submission of certain identifying factors as determined by the Commissioner of Public Safety.

Failure to comply with registration requirements is a Class D Felony.

After completing the initial registration you will be required to return address verification forms that have been mailed to you. Address verification forms shall be returned to the Department of Public Safety at P.O. Box 2794 Middletown, CT 06457-9294. You must also notify the Department of Public Safety within 5 days of changing your address and to notify the appropriate law enforcement authorities if you move to another state. Failure to comply with any of the foregoing requirements will make you subject to arrest for committing a Class D felony.

Department of Public Safety Sex Offender Registry Locations

Registrations will be processed at the following locations, *except on federal and state holidays*, as follows: Monday – Wednesday – Friday at all listed locations between 8:00 A.M. 12:00 P.M. and from 12:30 P.M. to 4:00 P.M. The troops in Montville and Bridgeport will also conduct registrations on Saturday during the same hours of the day.

TOLLAND
Troop "C" 800-318-7633
1320 Tolland Stage Road
(I-84 Exit 69)
Tolland, CT 06084

BRIDGEPORT
Troop "G" 800-575-6330
149 Prospect St.
(I-95 Exit 27)
Bridgeport, CT 06604

LITCHFIELD
Troop "L" 800-953-9949
452B Bantam Road
(Route 22)
Litchfield, CT 06759

MONTVILLE
Troop "E" 800-953-7747
I-395 Northbound between
Exits 79 and 79-A
Uncasville, CT 06382

In addition, registrations can be performed at the following location any weekday, Monday through Friday, *except on federal and state holidays*, between the hours of 8:30 A.M. to 4:00 P.M. as follows:

MIDDLETOWN
Department of Public Safety Headquarters
(860) 685-8060
1111 Country Club Road (I-91 Exit 20)
Middletown, CT 06457-9294

ATTACHMENT H

INMATE RELEASE NOTIFICATION FORM
CONNECTICUT DEPARTMENT OF CORRECTION

TO: Inmates Being Released to End of Sentence, Parole, Bond, or Any Other Releasing Mechanism

FROM: Department of Correction

RE: PUBLIC ACT 98-111

* * * * * * * * * * * * * * * * * * *

In accordance with the requirements of Public Act 98-111, an act concerning the registration of sex offenders, the Connecticut Department of Correction hereby notifies you of the following information:

This act requires any person released into the community on or after October 1, 1998, who was convicted or found not guilty by reason of mental disease or defect of certain crimes to register as a sexual offender. There are three categories of offenses that will require an offender to register as a sexual offender. The categories are: criminal offenses against a victim who is a minor (ten year registration); sexually violent offenses (potential lifetime registration); and any felony that the court deems was committed for sexual purposes (ten year registration).

The act also creates the new crime of failure to register as a sexual offender, which is a class D felony.

If you have ever been convicted of an offense identified in any of the above categories in the State of Connecticut or any other jurisdiction, you should contact the Department of Public Safety – Sex Offender Registry, P.O. Box 2794, Middletown, CT 06457-9294.

9/30/98

Sex Offender Certification Form

ATTACHMENT I

Instructions: (1) Clerk: Complete Part 1 and have the offender Sign Part IV. Provide original to offender, keep one copy for court file

(2) DOC or DPS: Complete Part II when identifying factors are received, keep a copy and give one copy to the offender, or attach a mittimus, to be returned to the court

(3) Clerk: Complete Part III upon return of form with certification by DPS or DOC, or upon expiration of time to return form.

(4) Clerk: Provide original to the Sex Offender Registry, retain one copy, and provide one comply to offender

---

Part I.

Court Location	Docket No.(s)
Name	DOB

The above named defendant has been ordered by the court to supply fingerprints, photographs and a blood sample for DNA analysis and to provide certification to the court of compliance with said order.

The offender must return to the court location noted above on (date)_____ with certification that these identifying

factors have been obtained for the Department of Public Safety.

Part II. Certification – To be Completed by the Department of Public Safety or Department of Correction

I hereby certify that photograph, fingerprints and blood sample for DNA analysis have been obtained for the Commissioner of Public Safety from the above named offender.

Case Number/Inmate Number	☐ Submitted by DPS ☐ Submitted by DOC

Name and Title	Badge Number (if applicable)	Date

Part III. For Court Use – Check one box upon return of form or expiration of time to return form:

☐ Completed Certification received by the court on _____

☐ Certification not returned as required by the offender and the court took the following action (if applicable)

_____

Clerk	Date

Part IV. For Offender – Acknowledgement of Receipt of This Form

I acknowledge receipt of this form from the court from which I was convicted. I understand and agree that the Commissioner of Public Safety must obtain my fingerprints, photograph and a blood sample for DNA analysis. I further agree and understand that I must return to court on the date noted in Section 1 above and supply the court with this certification form completed by the Department of Public Safety or, if I am in lieu of blood, by the Department of Correction.

Department of Public Safety Sex Offender Registry Locations

Registrations will be processed at the following locations, *except on federal and state holidays*, as follows Monday – Wednesday – Friday at all listed locations between 8:00 A.M. 12:00 P.M. and from 12:30 P.M. to 4:00 P.M. The troops in Montville and Bridgeport will also conduct registrations Saturday during the same hours of the day.

TOLLAND
Troop "C" 800-318-7633
1320 Tolland Stage Road
(I-84 Exit 69)
Tolland, CT 06084

BRIDGEPORT
Troop "G" 800-575-6330
149 Prospect St.
(I-95 Exit 27)
Bridgeport, CT 06604

LITCHFIELD
Troop "L" 800-953-9949
452B Bantam Road
(Route 202)
Litchfield, CT 06759

MONTVILLE
Troop "E" 800-953-7747
I-395 Northbound between
Exits 79 and 79-A
Uncasville, CT 06382

In addition, registrations can be performed at the following location any weekday, Monday through Friday, *except on federal and state holidays*, between the hours of 8:30 A.M. to 4:00 P.M. as follows:

MIDDLETOWN
Department of Public Safety Headquarters
(860) 685-8060
111 Country Club Road (I-91 Exit 20)
Middletown, CT 06457-9294

CONNECTICUT OFFICE OF ADULT PROBATION

Sex Offender Notification Policy

10/20/98

The Office of Adult Probation Sex Offender Notification Policy is subdivided into three sections. These are: A. Notifying applicable sex offenders under probation supervision that they are required to register and providing them with information to assist them in complying with the laws for registration; B. Providing the State Police with timely information about sex offenders who are required to register in order to facilitate registration requirements; and C. Providing information to residents and others in the community when it is deemed necessary to prevent someone from being victimized by a sex offender. These policies, and the procedures for implementation are presented below.

A. Notification to Sex Offender of Registration Requirements (P.A. 98-111)

Policy

All persons under the supervision of the Office of Adult Probation who must register under Public Act 98-111 will be informed by their probation officer of the requirement to register with the State Police and to maintain registration requirements.

Procedures

Sex offenders under probation supervision will be given registration instructions by their probation officer which will include the following:

-the probationer's obligation to maintain registration for a minimum of 10 years

-the probationer's obligation to comply with address verification as required by the State policy

-the probationer's obligation to notify the State Police in writing within 5 days of changing his or her address. (see also procedures under section B)

-the requirement for persons transferred to other states to register with law enforcement in the new state.

-the requirement for sex offenders transferred from other states to register with the State Police within 10 days of establishing a residence in Connecticut.

The probation officer will verify registration of these cases with the State Police within one week of being assigned the case either for investigation or supervision. Questions regarding registration applicability will be forwarded to the District manager.

-the requirement to submit a blood sample for DNA analysis

-the process and paperwork necessary for compliance

-the penalty for failure to comply with registration requirements (class D Felony)

Persons under Adult Probation supervision who *were previously* required to register with local police under CGS 54-102r or who have previously registered will be informed that they most now register (or re-register) with the State Police prior to January 1, 1999. *Specific instructions for compliance will be mailed to applicable probationers by the State Police.*

B. Notification to State Police of information on changes in the residence address or status of probationers who are required to register under P.a. 98-111

Policy

Information on convicted sex offenders who are under the supervision of the Office of Adult Probation will be provided to the State Police in order to facilitate the timely and consistent registration of sex offenders. as required by Public Act 98-111.

Procedures

All Probationers Required to Register Under PA-98-111

OAP will notify the State and local Police whenever a probationer who is required to register changes his/her address:

-a Sex Offender Registration Form (DPS-694-C) with the Change of Address box checked and including the probationer's name, DOB and new address will be forwarded to both the State and local Police within 24 hours of determining that the probationer has changed their residence address.

-the probation officer will, within 3 days of learning that the probationer has changed their address, notify the probationer of their legal requirement to re-register with the State Police within 5 days of a change of address.

APOLIS will be updated within 24 hours of receipt of notification of change of address

OAP will notify the State and local Police within 24 hours of determination that a probationer required to register under P.A. 98-111 has absconded.

OAP will enter information on all probationers who are required to register into the FL-17 screen of COLLECT. This information will include any relevant special conditions, in particular no contact orders, and an indication that the probationer is a registered sex offender.

C. Community Notification

Neither past nor current legislation requires the Office of Adult Probation to conduct sex offender notification in the community. An executive committee has been established to study this issue, however, and will make recommendations to the legislature at a future date. The Adult Probation policy in this area addresses circumstances when officers have reason to believe that a sex offender presents an imminent danger to an identifiable person or group. In those circumstances the officer will consult with appropriate supervisors and other officials to determine the best course of action.

Policy

Residents and/or other members of the community will be provided information about sex offenders under those circumstances when it is believed that such notification is necessary to prevent a person from being victimized by the sex offender.

Procedures

When a probation officer has reason to believe that a sex offender poses a specific risk to an identifiable person or group of persons they will consult with their supervisor to determine whether or not notification should be given to these parties.

The State and/or local police will be consulted to determine whether or not they will conduct the notification.

The District Manager will be consulted for further directions.

APPENDIX

The Office of Adult Probation Sex Offender Notification Policy applies to persons under probation supervision who are required to register as sexual offenders under Public Act 98-111.

Applicable Cases:

There are *five* categories of cases that are required to register under the new law. These include:

- Persons who are required to register under current law (CGS 54-102r) (10 year registration)
- Persons convicted or found not guilty by reason of mental disease of a criminal offense against a minor and released into the community on or after 10/1/98 (10 year registration)
- Persons convicted or found not guilty by reason of mental disease or defect of a sexually violent offense

and released into the community on or after 10/1/98 (potential lifetime registration)

- Persons convicted of similar sex offenses in other states and transferred to Connecticut under the Interstate Compact (10 year registration from time of release to community in other state)

These categories, and their related offenses, are described below:

1. All persons under the supervision of the Office of Adult Probation convicted of one or more of the following offenses prior to 10/1/98 and required to register with local police under CGS 54-102r:

53a-70	Sexual Assault, 1'st degree
53a-70a	Aggravated Sexual Assault, 1'st degree
53a-70b	Sexual Assault in a Spousal Relationship
53a-71	Sexual Assault, 2'nd degree
53a-72a	Sexual Assault, 3'rd degree
53a-72b	Sexual Assault with Firearm, 3'rd degree
53-21(2)	Injury or Risk of Injury to a Minor, subdivision 2

2. All persons under the supervision of the Office of Adult probation who have been convicted or found not guilty by reason of mental disease or defect of a criminal offense against a victim who is a minor and released into the community on or after 10/1/98.

Applicable offenses:

53-21(2)	Injury or Risk of Injury to a Minor
53a-70(a)(2)	Sexual Assault 1'st
53a 71(a), subdivision 1, 4 or 8	Sexual Assault 2'nd
53a-72a(a)(2)	Sexual Assault 3'rd
53a-73a(a)(1)(A), (a)(1)(D) or (a)(6)	Sexual Assault 4'th
53a-86(a)(2)	Promoting Prostitution 1'st
53a-87(a)(2)	Promoting Prostitution 2'nd
53a-196a	Employing Minor in an Obscene Performance
53a-196b	Employing Minor in an Obscene Performance

or. One of the following crimes and the court finds that at the time of the offense the victim was under the age of 18 years:

53a-92, 53a-92a	Kidnapping 1'st
53a-94, 53a-94a	Kidnapping 2'nd
53a-95	Unlawful Restraint 1'st
53a-96	Unlawful Restraint 2'nd
53a-186	Public Indecency

or any of the above where the person is criminally liable under:

53a-8	Criminal Liability for Acts of Another
53a-48	Conspiracy
53a-49	Criminal Attempt

3. All persons under the Supervision of the Office of Adult Probation who have been convicted or found not guilty by reason of mental disease or defect of a

sexually violent offense and released into the community on or after 10/1/88.

Applicable Offenses:

53a-70 (a) (1)(3)	Sexual Assault 1'st
53a-70a	Aggravated Sexual Assault 1'st
53a-70b	Sexual Assault in a Spousal or Cohabiting Relationship
53a 71(a) subdivision 2, 3, 5, 6, or 7	Sexual Assault 2'nd
53a-72a (a)(1)	Sexual Assault 3'rd
53a-72b	Sexual Assault 3'rd with Firearm
53a-73a (a)(1)(B, C, or E)	Sexual Assault 4'th
53a-73a (a) (2, 3, 4, or 5)	Sexual Assault 4'th

or, if intent to sexually violate or abuse the victim:

53a-92, 53a-92a	Kidnapping 1'st

or any of the above where the person is criminally liable under:

53a-8	Criminal Liability for Acts of Another
53a-48	Conspiracy
53a-49	Criminal Attempt

or any felony that the court finds was committed for sexual purposes (10 year registration)

4. All persons under the supervision of the Office of Adult Probation who have been convicted in other states of offenses similar to those requiring registration under CGS 54-102r or P.A. 98-111 and whose supervision has been transferred to Connecticut under the terms of the Interstate Compact.

5. Any person who has been convicted or found not guilty by reason of mental disease or defect in this state on or after 10/1/98, of any felony that the court finds was committed for sexual purposes and for which the court requires registration.

---

go to text version

State of Connecticut

Governor
John G. Rowland
Welcomes You

ConneCT

About Connecticut
What's New

The Quiz!
Visit the featured links Below...

State Government

Executive | Judicial
Legislative
Agencies/Organizations
People

Answers

Search | A to Z
FAQs

or Special Interest

Licenses/Permits
Towns/Cities
Tourism | Commerce
Education

Branches

ConneCT is coordinated by the ConneCT Management Advisory Committee (CMAC) and complies with the Universal Website Accessibility Policy. Send mail to webmaster@po.state.ct.us. Copyright 1995 to 1999 State of Connecticut. All State disclaimers and permissions apply.

CID Best Bet Spring '98

Government semifinalist 3rd Annual

1998 Best of the Web WINNER

http://www.state.ct.us

FAQs

Frequently Asked Questions

Connecticut Income Tax Forms . . .
Relocation to Connecticut . . .
Opening a Business in Connecticut . . .
Finding a Job/State Employment . . .
Facts and Information about Connecticut . . .
Contacting Your State Legislator . . .
Contacting Your Federal Legislator . . .
Connecticut Maps . . .
State Unclaimed Property
How Do I Contact . . .
Where Can I Find . . .

How Do I Contact . . .

Finding People: Contacts for State Agencies

The Connecticut Department of Administrative Services maintains an alphabetic listing of Connecticut State agencies and their general contacts and phone numbers on a web page at: http://www.state.ct.us/phone/dept.htm.

- The Governor's Office
- The Lieutenant Governor's Office
- The Secretary of State
- The State Comptroller
- State Employees
- The State Treasurer

- The Attorney General
- DEP for Oil and Chemical Spills

Where Can I Find . . .

- Connecticut Constitution and other Historical Information & Documents
- Connecticut State Statutes
- Connecticut Income Tax Forms
- Connecticut Lotto Drawings
- Connecticut Department of Motor Vehicles
- Job/State Employment

- Boating
- Camping
- Child Support Delinquents, Wanted Posters for
- Docks and Beach Erosion Information
- Fishing Guide
- Hunting and Trapping Guide
- Sex Offender Registry
- State Bar Examination Results
- State Parks and Forests
- State Purchasing/Procurement

http://www.state.ct.us/faqs.htm

Can't Find It? . . .

If you can't find what you are looking for . . . Please **E-mail** the Connecticut State Library at their E-mail address: isref@cslib.org

Detailed Answers for Items Above . . .

Sex Offender Registry

- The Connecticut Department of Public Safety is responsible for the Sexual Offender Registry Website.

The Sexual Offender Registry can be accessed from the Department of Public Safety home page or directly at the following address: http://www.state.ct.us/dps/Sor.htm

Purchasing/Procurement

- The Connecticut Department of Administrative Services (DAS) provides procurement services on behalf of all state agencies for all general service and commodity areas. Please direct your specific question to the DAS webmaster **E-mail**: das.webmaster@po.state.ct.us. For a complete listing of current business opportunities with the State of Connecticut, please see the Business Opportunity web page on their site at http://www.das.state.ct.us/busopp.htm.

- The Connecticut Department of Information Technology (DOIT) provides procurement services relating to telecommunications systems and services, computer hardware and software, media, supplies and related contractual services. For a complete listing of current IT Purchasing opportunities, Contract Awards and Sealed Bid and Proposal Notices with the State of Connecticut, please see the DOIT IT Purchasing web page on their site at http://www.doit.state.ct.us/Purchasing/purchasing.htm.

Relocation to Connecticut

Useful Town-Based Information . . .

The **ConneCT** Municipality Websites page, is a comprehensive listing of all current websites available for the **169 towns and cities in Connecticut**.

The Department of Economic and Community Development maintains a web page for Connecticut Town Profiles. Each town profile has sections on **demographics, economics, education, local government, housing, labor force, and quality of life**, more than 200 statistics in total. Up to five profiles are available at no charge. Please see the web page: http://www.state.ct.us/ecd/research/townprof/index.html

The Office of Policy and Management maintains, a list of municipal data resources and databases including **mill rates by town** and a compendium of Municipal Fiscal Indicators. Please see the web page: http://www.opm.state.ct.us/database.htm. Current **population statistics** for each of Connecticut's 169 towns is also available at: http://www.opm.state.ct.us/pdpd3/data/estimate.htm. The US Census Bureau's U.S. Gazetteer website at: http://www.census.gov/cgi-bin/gazetteer, can also provide an extraordinary amount of census data for particular Connecticut towns.

Useful Education/School Based Information . . .

The Connecticut State Department of Education (SDE), is a useful **starting place for K-12 Education**/School Based Information. SDE maintains a web page for accessing Strategic School Profiles, a town-by-town, school-by-school assessment based a standard set of categories. Connecticut Education Facts are also available on this site.

For information on **Connecticut's Institutions of Higher Education** and other post

secondary educational opportunities, the Connecticut Department of Higher Education a [sic] is a useful starting place: http://ctdhe.commnet.edu/dheweb/toc.htm

Useful Housing/Real Estate Based Information . . .

The Connecticut Association of Realtors (which is not a state government organization) maintains a website known as The Connecticut Living Network at: http://ct.living.net/ – a comprehensive source for REALTORS® and homes in Connecticut

Tax Forms Request

The Connecticut Department of Revenue Services maintains a website at http://www.state.ct.us/drs/index.html. When viewing the home page, look to the left frame and click on FORMS to take you to the section of their web for downloading State of Connecticut Tax forms. For links to other states tax sites, look to the left frame and click on OTHER TAX SITES and follow the links to State Tax Departments and, ultimately, the state of your choice.

Finding a Job/State Employment

There are two Connecticut State Agencies that can help you with your job search.

- The Connecticut Department of Labor maintains a website at http://www.ctdol.state.ct.us/. Within that website they maintain a page for Employment Services: http://www.ctdol.state.ct.us/progsupt/jobsrvce/ emplser.htm. That page contains links to Search for Work (including America's

Talent Bank, Connecticut's Job Bank, & America's Job Bank) -Tips on Finding Jobs -Programs and Services -Links to Related Information. For additional questions and information, please **E-mail** the DOL webmaster at dol.help@po.state.ct.us

- The Connecticut Department of Administrative Services (DAS) administers employment services for Connecticut State government. DAS has a web page for State Employment Opportunities, which includes State Job Examination Announcements, job opportunities at the University of Connecticut, and job opportunities at the University of Connecticut Health Center, at http://www.das.state.ct.us/public.htm. They also maintain another page on their website for state agencies that is another good source of state employment information at http://www.das.state.ct.us/osaopp.htm. Information includes Promotional Exams, Open Competitive Exams, Examination Information and Application Forms for State Employment. Further information can be found at http://www.das.state.ct.us/HR/HRhome.htm. For additional questions and information about state government employment, please **E-mail** the DAS webmaster at das.webmaster@po.state.ct.us

Facts and Information about Connecticut

- Connecticut residents may be familiar with the annual publication available in most Connecticut libraries known as the "Blue Book" or its official title the Connecticut State Register and Manual. This book contains a section known as **"Selected Facts About Connecticut"**, which contains some not so known facts about Connecticut.

- The **ConneCT** About Connecticut page contains facts and other links to interesting information about Connecticut.
- The **Tourism** Special Events page also offers links to interesting information about Connecticut.
- The Connecticut Economic Resource Center (CERC) website also has a good web page for Connecticut facts including, a section called Surprising Facts About Connecticut. Please see: http://www.cerc.com/cerc/cercweb.nsf/pages/About Connecticut.html
- The ConneCT Historical Information & Document page at http://www.comb.org/hid/index.htm also contains a section known as Selected Dates in Connecticut's History, which may be of interest as well.
- Also, the Connecticut State Liberty maintains a general reference **e-mail address** at: isref@cslib.org. Please direct your question to this e-mail address.

Opening a Business in the State of Connecticut

The following sites contain information pertaining to opening a business in the State of Connecticut.

Need information and Help?

- The *Connecticut Economic Resource Center* (CERC) is funded by the state and by private industry and is business's **central point of contact** for all of the state agencies and organizations involved in economic development.

- The Connecticut *Department of Economic and Community Development* (DECD) is the state's lead agency for economic development and housing development. **E-Mail**: DECD@po.state.ct.us The DECD *Help with Starting a Business* page includes links to **Smart Start**, a gateway to business registration in Connecticut; **Starting A Business**, a 24 page brochure which answers frequently asked questions about starting a business in Connecticut, and **Help is Here**, a 20 page brochure is your guide to what Connecticut offers businesses.

- In addition, the "Commerce" page on the ConneCT website contains information about agencies and organizations within the State of Connecticut ready to assist businesses and individuals in support of the state's economic development as well as additional information about Connecticut's economy, markets, and labor force: http://www.state.ct.us/commerce.htm. **E-Mail**: todd.bentsen@po.state.ct.us

- The Connecticut *Small Business Development Centers* provides confidential, **one-on-one business counseling** services to small business owners throughout the state. The focus is on helping small business owners and those considering starting a small business to develop the skills required to successfully run a business and thrive. All business services are provided for free.

Need to License, Register or Incorporate Your Business?

- The *Connecticut Licensing Info Center* Website (CLIC) offers direct, on-line access to most **licensing and permitting** requirements within Connecticut State government. It's a searchable website

with access to detailed information on 900 licenses, permits and registrations and includes links to downloadable forms from most of 25 licensing and permitting agencies. **E-Mail**: dennis.mcneil@po.state.ct.us

- For **incorporating a business** in the State of Connecticut contact the *Commercial Recording Division* of the Secretary of the State's Office. **E-Mail**: peter.bartucca@po.state.ct.us

- To obtain a **Tax Number**, etc. for doing business in the State contact the Connecticut *Department of Revenue Services* (see "Starting a Business: In the left hand frame of the Home Page) **E-Mail**: webmaster.drs@po.state.ct.us

Need Financing?

- The *Connecticut Development Authority* (DCA) will provide **creative financial solutions** for businesses that encourage economic and employment growth, job training and business recruitment. In addition, the CDA provides direct loans to businesses when companies significantly expand or relocate to Connecticut or when private lenders are unable to address the total needs of the business.

- *Connecticut Innovations* is the State of Connecticut's **technology** development corporation. Connecticut Innovation invests in emerging Connecticut technology companies that are the building blocks of a dynamic, competitive economy. Connecticut Innovations provides the risk capital companies need to develop, market and launch new products and services. Connecticut Innovations also fosters the transfer of laboratory research into commercial applications for the next generation of enterprises.

Need a Building?

- SiteFinder, developed by the Connecticut Economic Resource Center (CERC), is Connecticut's most comprehensive source of available commercial and industrial real estate properties. SiteFinder @ http://www.cerc.com/sitefindernew.html, allows users of the World Wide Web to perform simple searches for available commercial real estate. Searches can be performed to find available buildings as well as sites. Also, searches can be performed based on building or site type (commercial, industrial, office, etc.), building or site size, location (city, county or statewide), and other factors.

Contacting State Your [sic] **Legislator**

You can find contact information about your state legislator, depending upon his or her political affiliation and/or elected office, via the following web pages:

House

- The Connecticut House Republications maintain a web page listing contact information for their members. The address is: http://www.housegop.state.ct.us/contact.htm
- The Connecticut House Democrats maintain a web page listing contact information for their members. The "alpha" list of members is located at: http://www.cga.state.ct.us/hdo/repsalpha.htm. The Representative List Sorted by Town is located at: http://www.cga.state.ct.us/hdo/repbytown.htm

Senate

- For a list of Web Pages for each Senator: http://www.cga.state.ct.us/members/slist.htm
- The Connecticut Senate Democrats maintain a web page listing contact information for their members. The "alpha" list of members is located at: http://www.senatedems.state.ct.us/info.html. Finding a Democratic Senator by the Town you live in: http://www.senatedems.state.ct.us/Towns.html.
- The Connecticut Senate Republicans maintain a web page listing contact information for their members. The "alpha" list of members is located at: http://www.senatereps.state.ct.us/contact.htm

Contacting Your Federal Legislator

- Hyperlinks to Connecticut U.S. Congressional Members are available at the following web page: http://www.das.state.ct.us/Home/US House Members.htm
- Hyperlinks to Connecticut U.S. Senators are available at the following web page: http://www.das.state.ct.us/Home/US Senate Members.htm

Maps

- Both the Connecticut Department of Transportation http://www.state.ct.us/dot/pub/maps.html and the University of Connecticut http://magic.lib.uconn.edu/ provide online access to extensive libraries of digital maps. However, the majority of these maps require Geographical Information System applications software to access, view, manipulate and print them.

- The Department of Economic and Community Development also maintains a Connecticut Map/ GIS data page on their web site at: http://www.state.ct.us/ecd/research/maps/index.html. Their maps are available in either image file formats (*.GIF or *.JPG) or download document formats such as PDF (Portable Document Format) and EPS (encapsulated PostScript file).
- You may also want to visit/contact the DEP Store: The Maps and Publications Office of the Natural Resources Center provide by the Connecticut Department of Environmental Protection. Please see their web page at: http://dep.state.ct.us/cgnhs/store.htm.

Unclaimed Property

Unclaimed property is a function of the Connecticut *Office of the State Treasurer*. For unclaimed property claims, please see their web page at http://www.state.ct.us/ott/ ucp.htm. For additional information, you can **E-mail** the Unclaimed Property Unit: unclaimed.property@po.state. ct.us. For inquiries regarding a claim **please include** the following information in your E-mail: **Name, Current Address, and Phone Number of claimant.**

Child Support Delinquents, Wanted Posters for

There are actually two pages, one produced by the *State Attorney General's office* and the other by the *Department of Social Services*.

State Employees

The *Department of Administrative Services* maintains a *State Employee* Directory which is

currently Connecticut's best single tool on the 'Web'. The limitations of this directory is that it currently does not include all State Employees at this time.

The State of Connecticut is in the process of implementing a statewide Email/directory project using X.500 technology. As an interim solution, the *Directory* Page of the Connecticut Website is intended to provide users with a single point of access to all the state directories available.

Oil and Chemical Spills

The Department of Environmental Protection will assist you with any reporting of Oil or Chemical Spills Telephone: (860) 424-3333 Fax: (860) 424-4069

Home	New	About	Symbols	Welcome	Executive
Judicial	Legislative	Agencies	People	Search	AtoZ
FAQs	Licenses	Tourism	Commerce	Education	Towns

Send mail to webmaster@po.state.ct.us. Copyright 1995 to 1999 State of Connecticut. All State disclaimers and permissions apply.

[LOGO] State of Connecticut
DEPARTMENT OF PUBLIC SAFETY
[Picture Omitted In Printing]

Dr. Henry C. Lee
Commissioner

MISSION

The Department of Public Safety provides a coordinated, integrated program for the protection of life and property within this state. The Department of Public Safety is charged to prevent crime, apprehend criminals, enforce motor vehicle laws, investigate crimes and traffic accidents and perform other regulatory and safety functions to benefit all citizens of this and other states. The department also provides fire/building services; oversees emergency management and statewide emergency telecommunications; reviews/enforces the state building and fire codes; trains and certifies local building and fire officials to safeguard the lives and property of the citizens of this state and those who work and travel within its borders.

DIVISION OF STATE POLICE [LOGO]

DIVISION OF FIRE, EMERENCY & BUILDING SERVICES [LOGO]

SEX OFFENDER REGISTRY	HEADING TOWARD A HUNDRED
FAQ'S	UNIFORM CRIME REPORT

CSP Needs Your Help

Go To **Conne** the official State of Connecticut Website

Please send comments to:
DPS. Feedback@po.state.ct.us

This page last updated on: Monday, May 24, 1999

[LOGO] Connecticut Department of Public Safety
Sex Offender Registry

- **Search Database for Offenders**

PA98-111 (Connecticut General Statutes §§54-250 through 54-229)-mandates that the Connecticut Department of Public Safety establish and maintain a central registry of persons who are required to register under sections 54-250 through 54-254 of the general statutes. This website makes available to the public registry information.

IMPORTANT REMINDERS

Positive identification of persons believed to be subject to the registration requirements cannot be established unless a fingerprint comparison is made. *PA98-170* authorizes the *Department of Public Safety* to release, to any person, a state criminal conviction record for fee of $25.00. For more information, contact the *Department of Public Safety*, State Bureau of Identification (SPBI) at (860) 685-8480.

The Department of Public Safety updates this information regularly, to try to assure that it is complete and accurate. However, this information can change quickly. You are cautioned that the information provided on this site is information of record and may not reflect the current residence, status, or other information regarding a registrant (offender). Offenders who were conditionally discharged prior to October 1, 1988, are not required to register. The registry contains no information about such persons. Offenders convicted or found not guilty by reason of mental disease or defect of certain offenses specified under *PA 98-111* and released to the community after October 1, 1988, must register. *PA 98-111* also specifies that registrations be expanded to include an additional number of offenders convicted or found not guilty by reason of mental disease or defect of certain offenses when released to the community after October 1, 1998.

Persons who have been arrested or charged with a sex offense listed in PA 98-111 are not required to register unless the arrest or charge results in a conviction or a finding of not guilty by reason of mental disease or defect. This list contains only offenders who have been convicted or found not guilty by reason of mental disease or defect.

If you believe that any of the information found in these records is in error, please contact the ***Connecticut Department of Public Safety, Division of State Police Sex Offender Registry Unit*** at *P.O. Box 2794 Middletown, CT 06457 Phone (860) 685-8060*. This information is made available for the purpose of complying with Connecticut General Statutes § 54-250, *et seq.* which requires the Connecticut Department of Public Safety to establish and maintain a registry of persons who are required to register under sections 54-250 through 54-254 of the

General Statutes. Those statutes require that certain individuals be included in the registry because of their conviction or finding of not guilty by reason of mental disease or defect of a specified criminal offense and subsequent release into the community on or after October 1, 1988. The registry is based on the legislature's decision to facilitate access to publicly-available information about persons convicted of sexual offenses. The Department of Public Safety has not considered or assessed the specific risk of reoffense with regard to any individual prior to his or her inclusion within this registry, and has made no determination that any individual included in the Registry is currently dangerous. Individuals included within the registry are included solely by virtue of their conviction record and state law. The main purpose of providing this data on the Internet is to make the information more easily available and accessible, not to warn about any specific individual. Anyone who uses this information to injure, harass, or commit a criminal act against any person included in the registry or any other person is subject to criminal prosecution.

Please see Section 54-250 of the Connecticut General Statutes and the Connecticut Penal Code at Sections ***53a-4 et al.,*** for specific language pertaining to these offenses resulting in the requirement that someone register.

sex.offender.registry@po.state.ct.us

Due to the large volume of messages received at this time, we are unable to respond to each one individually. However, if you have given information regarding a sex offender it will be verified and processed. If you have offered your opinion on the issue of sex offender registration it has

been read and considered. If you are a sex offender and are inquiring whether you need to register or not, please send your full name and date of birth so that this can be verified. We appreciate your interest in this matter. Sgt. Kathleen A. Miller.

MSNBC

TUESDAY LOCAL NEWS
June 29, 1999

Man accused of murdering Bristol priest appears in court

32-year-old Michael Ouellette was in court Monday in connection with murder charges in the death of Reverend Robert Lysz. Ouellette is being held on a $1 million bond and will be back in court July 13th.

• DAILY NEWS SUMMARY COMPLETE STORY ▶

Today's Headlines

- Accused priest killer placed ad in local paper on day of murder
- Community comes together to remember slain priest
- Water agency issues mandatory outdoor water ban
- Officials asking people to cut back power usage
- President Clinton visits Connecticut for luncheon
- Prosecutors' hopes rest with tissue sample from 1973 murder mystery
- Hartford City Council votes to take action regarding insurance rates
- Racial profiling bill signed into law
- Deal reached between Colonial Realty and investors
- Police say New Haven crime rate is down
- Boy dies after car struck and killed him
- Top state students choosing UConn over other schools
- Powerball jackpot reaches $130 million
- Albanian-Americans in Connecticut react to peace deal
- Milford church gathers goods to help Kosovar refugees
- Monroe businessman reunited with Albanian refugee sister, family
- Waterbury prepares to host 1,000 refugees
- Refugee family finds relatives in Connecticut
- Waterbury holds biggest fund-raiser yet for Kosovo refugees
- Austin Powers doll may be tc indy for some shoppers
- State, federal agencies clamp down on talent scout
- NBC 30, state police join forces to "Stop the Violence" in schools
- "Megan's Law" list hits the Web
- An easy way to track your congressman or senator
- NBC 30 BUSINESS NEWS: Connecticut's Top 30 Stocks
- NBC 30 Connecticut News invites you to visit our online news, weather and sports forum

Talcott Mountain Music Festival '99
Summer Concert Series: The Hartford Symphony Orchestra
(click here for more info)

U.S.Naval Observatory Master Clock
12:16:52
Eastern Time
(refresh to update)

CONNECTICUT'S TOP 30 STOCKS

Click above for updated quotes throughout the business day.

MSNBC Marketwatch

(quote info on 20 minute delay)

TODAY'S HOT LINKS

Click above to see a list of Web sites mentioned during our newscasts.

- Ozone Alert: Keep track of local and regional smog levels.
- Pollen Count: Concerned about seasonal allergies? Here's where to get updated information.
- Family Search: The online genealogy database recently launched by the Mormon Church.
- Cancer Trials: Two Web sites where you can get information about STAR, the Study of Tamoxifen and Raloxifene.
- Meagan's List: The Connecticut State Police sex offender registry Web site.

TODAY'S RECIPES

Click above for the recipes featured on "NBC 30 Connecticut News Today Weekend"

SPECIAL PROJECTS

Click above for the latest news and analysis from MSNBC.

STOP the VIOLENCE before it starts.

Click above for information about our partnership with state and local police.

WHAT'S ON TV

- Right Now
- Next at 1pm
- Then at 2p
- Program

FAVORITE

Click above f
the official W
some of NBC

LOCAL LIVING

- Movies / Concerts
- Apt. Rentals
- Career Center
- Cars
- Classifieds
- Coupons
- Games
- Home Sales
- Lottery
- Schools Info
- Travel
- Yellow Pages
- NBC.com
- Other NBC Stations

▸ Copyright (c)1999 National Broadcasting Company, Inc.

NEWS 8 CHANNEL

ONLINE

Voted 'Best Sportscast in Connecticut' by the Associated Press

June 29 / 8:30 am

ABCNews.com

Take a ride on Chopper 8 Live

CNN Interactive

House of News
Notes from the News Director

NEWS UPDATE:
Power Warning Issued
Police not close to an arrest in Jovin case.
Boy struck by car dies
Judge approves Colonial Realty settlement
Mural raising eyebrows in New London
AAA predicts record volume for Fourth of July
Mystic caring for two beached whales.
FIREWORKS: See where the rockets red glare are bursting in air this year.

▸ State Sex Offender Database

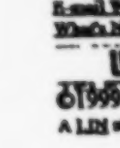
TEAM 8 INVESTIGATES:
▸ Foxwoods Field Trip
Bad Bridges

CONSUMER TEAM 8:
Digital phone service snafus
Weekend Internet Airfares
Cheap Eats
Help Me Anna

Yale-New Haven Hospital www.ynhh.org

HEALTH TEAM 8:
Lead Poisoning Leads to Tooth Decay
Red Cross blood donation locations

ALL ABOUT WOMEN:
Painter Liz Bermel



How do you pick your favorite stories from more than 600 reported over more than a dozen years? It's impossible, but there are a few Diane wanted to share one more time in this last Positively Connecticut report on News Channel 8.

COUNTDOWN 2000:
Countdown the days, hours and seconds to 2000

PET OF THE WEEK:
Animal Shelt[illegible] across Connecticut

cool STUFF

Connecticut has many museums, big and small, with a wide variety of attractions. Find out about some of them in this week's Cool Stuff from the Web.

Only Online: PC Expo shows the world the latest and greatest in computer gear

PROMOTIONS

BEAT THE PRO
Can you Beat the Pro? Find out how to try.

WPLR / News Channel 8 "Wheel of Fortune" giveaway.

Weather Camp 8
See what the fun is all about at Weather Camp '99.
Click on the picture for details.

8 INTERACTIVE

Have a comment to make about what's happening in Connecticut and the world?

Check out our 8 Interactive Question of the Day

INSIDE 8

News Channel 8 wins 6 Emmy Awards

News Channel 8 wins top Sports, Videography honors at 1998 Associated Press Awards.

News Channel 8 goes DIGITAL!

©1999 WTNH/WTNH-DT
A LIN station.

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

JOHN DOE,	: CIVIL NO.
Plaintiff,	: 3:99CV0314(RNC)
	:
v.	:
	:
DR. HENRY LEE, ET AL,	: JULY 23, 1999
Defendants.	:

ANSWER AND AFFIRMATIVE DEFENSES TO THIRD AMENDED COMPLAINT

As to the Answer:

1. As to Paragraph 1, the defendants deny that this action is brought on behalf of any persons other than the plaintiff. As to the remainder of this Paragraph, the defendants are without sufficient information upon which to form a belief, and therefore leave the plaintiff to his proof.

2. Paragraph 2 is denied.

3. As to Paragraph 3, the defendants admit that registration is required on the basis of a conviction or finding of not guilty by reason of insanity for one of the offenses listed in the statute and release into the community during the time periods specified in the statute. The remainder of this Paragraph is denied.

4-6. As to Paragraphs 4-6, the defendants are without sufficient information upon which to form a belief, and therefore leave the plaintiff to his proof.

7-8. Paragraphs 7 and 8 are admitted.

9. As Conn. Gen. Stat. §§ 54-257(a) and 54-258(a)(1) are statutory provisions, the defendants neither admit nor deny their content.

10-11. Paragraphs 10 and 11 are admitted.

12. As Conn. Gen. Stat. § 18-81 is a statutory provision, the defendants neither admit nor deny its content.

13. As Conn. Gen. Stat. § 54-256 is a statutory provision, the defendants neither admit nor deny its content.

14. Paragraph 14 is admitted.

15. Paragraph 15 is denied.

16-17. As to Paragraphs 16-17, the defendants are without sufficient information upon which to form a belief, and therefore leave the plaintiff to his proof.

18. Paragraph 18 is admitted.

19-22. Paragraphs 19-22 are denied.

23. As to Paragraph 23, the defendants are without sufficient information upon which to form a belief, and therefore leave the plaintiff to his proof.

24-26. Paragraphs 24-26 are denied.

27. As Conn. Gen. Stat. §§ 54-250 *et seq.* are statutory provisions, the defendants neither admit nor deny their content.

28. As Conn. Gen. Stat. §§ 54-251(a), 54-252(a), 54-252(b), and 54-253(a) are statutory provisions, the defendants neither admit nor deny their content.

29. As Conn. Gen. Stat. §§ 54-250(3), 54-251(a), 54-252(a), 54-252(b), and 54-253(a) are statutory provisions, the defendants neither admit nor deny their content.

30. Paragraphs 30-31 are admitted.

32-35. As to Paragraphs 32-35, the defendants are without sufficient information upon which to form a belief, and therefore leave the plaintiff to his proof.

36. As Conn. Gen. Stat. § 54-251(a) is a statutory provision, the defendants neither admit nor deny its content.

37. As Conn. Gen. Stat. § 54-251(a) is a statutory provision, the defendants neither admit nor deny its content.

38. As Conn. Gen. Stat. § 54-252(a) is a statutory provision, the defendants neither admit nor deny its content.

39. As Conn. Gen. Stat. §§ 54-251(b)-(c) and 54-252(a) are statutory provisions, the defendants neither admit nor deny their content.

40. As Conn. Gen. Stat. § 54-21(b)-(c) are statutory provisions, the defendants neither admit nor deny their content.

41. As Conn. Gen. Stat. § 54-250(3)(a) is a statutory provision, the defendants neither admit nor deny its content.

42. As Conn. Gen. Stat. §§ 54-251(d) and 54-252(d) and 54-253(d) are statutory provisions, the defendants neither admit nor deny their content.

43. As to Paragraph 43, it is admitted that the Department of Public Safety acts in accordance with the provisions of Conn. Gen. Stat. § 54-102g(d).

44. As to Paragraph 44, the defendants are without sufficient information upon which to form a belief, and therefore leave the plaintiff to his proof.

45. As to Paragraph 45, the defendants are without sufficient information upon which to form a belief, and therefore leave the plaintiff to his proof.

46. As Conn. Gen. Stat. §§ 54-250 *et seq.* are statutory provisions, the defendants neither admit nor deny their content.

47. As Conn. Gen. Stat. §§ 54-251(d) and 54-252(d) and 54-253(c) are statutory provisions, the defendants neither admit nor deny their content.

48. As Conn. Gen. Stat. § 54-257(b)-(c) are statutory provisions, the defendants neither admit nor deny their content.

49. As Conn. Gen. Stat. § 54-257(c) is a statutory provision, the defendants neither admit nor deny its content.

50. As Conn. Gen. Stat. § 54-257(c) is a statutory provision, the defendants neither admit nor deny its content.

51. As Conn. Gen. Stat. § 54-257(c) is a statutory provision, the defendants neither admit nor deny its content.

52. As Conn. Gen. Stat. §§ 54-251(a) and 54-252(a) are statutory provisions, the defendants neither admit nor deny their content.

53. As Conn. Gen. Stat. §§ 54-251(d) and 54-252(d) and 54-253(c) are statutory provisions, the defendants neither admit nor deny their content.

54-56. As to Paragraphs 54-56, the defendants are without sufficient information upon which to form a belief, and therefore leave the plaintiff to his proof.

57. As Conn. Gen. Stat. § 54-257(c) is a statutory provision, the defendants neither admit nor deny its content.

58. As Conn. Gen. Stat. § 54-258(a)(1) is a statutory provision, the defendants neither admit nor deny its content.

59. As Conn. Gen. Stat. § 54-258(a)(1) is a statutory provision, the defendants neither admit nor deny its content.

60. As Conn. Gen. Stat. § 54-258(a)(1) is a statutory provision, the defendants neither admit nor deny its content.

61. Paragraph 61 is admitted.

62. As Conn. Gen. Stat. § 54-255(a)-(b) are statutory provisions, the defendants neither admit nor deny their content.

63. As Conn. Gen. Stat. §§ 54-255(a)-(c) are statutory provisions, the defendants neither admit nor deny their content.

64. As Conn. Gen. Stat. § 54-255(c) is a statutory provision, the defendants neither admit nor deny its content.

65. As Conn. Gen. Stat. §§ 54-255(c)(1), 54-255(c)(2), 54-255(c)(3), 54-255(c)(4), and 54-255(c)(5) are statutory provisions, the defendants neither admit nor deny their content.

66. As Conn. Gen. Stat. § 54-255(c) is a statutory provision, the defendants neither admit nor deny its content.

67. As to Paragraph 67, as it is assumed that the reference to "The statute" refers to Conn. Gen. Stat. § 54-255(c) which is referenced in the preceding Paragraph, and even if it is not, since this Paragraph seems to paraphrase a statutory provision, the defendants neither admit nor deny its content.

68. As to Paragraph 68, the defendants are without sufficient information upon which to form a belief, and therefore leave the plaintiff to his proof.

69. As Conn. Gen. Stat. § 54-257(a) is a statutory provision, the defendants neither admit nor deny its content.

70. As Conn. Gen. Stat. § 54-258(a)(2) is a statutory provision, the defendants neither admit nor deny its content.

71. As Conn. Gen. Stat. §§ 54-250 *et seq.* are statutory provisions, the defendants neither admit nor deny their content.

72. As to Paragraph 72, the defendants are without sufficient information upon which to form a belief, and therefore leave the plaintiff to his proof.

73. As to Paragraph 73, the defendants are without sufficient information upon which to form a belief, and therefore leave the plaintiff to his proof.

74. As to Paragraph 74, the defendants are without sufficient information upon which to form a belief, and therefore leave the plaintiff to his proof.

75. Paragraph 75 is denied.

76. Paragraph 76 is denied.

77. Paragraph 77 is denied.

78. Paragraph 78 is denied.

79. Paragraph 79 is denied.

80. The responses to Paragraphs 1 through 79 are adopted and reincorporated as if fully set forth herein.

81. As to Paragraph 81, the defendants are without sufficient information upon which to form a belief, and therefore leave the plaintiff to his proof.

82. As to Paragraph 82, the defendants are without sufficient information upon which to form a belief, and therefore leave the plaintiff to his proof.

83. Paragraph 83 is denied.

84. Paragraph 84 is denied.

85. The responses to Paragraphs 1 through 84 are adopted and reincorporated as if fully set forth herein.

86. As to Paragraph 86, the defendants are without sufficient information upon which to form a belief, and therefore leave the plaintiff to his proof.

87. Paragraph 87 is denied.

88. Paragraph 88 is denied.

89. Paragraph 89 is denied.

AFFIRMATIVE DEFENSES

First Affirmative Defense:

The plaintiff in this matter has failed to state a claim upon which injunctive, declaratory, or any other relief can be granted.

Second Affirmative Defense:

This Court lacks subject matter jurisdiction over this matter pursuant to the *Younger* abstention doctrine.

DEFENDANTS
Dr. Henry C. Lee, et al,

RICHARD BLUMENTHAL
ATTORNEY GENERAL

BY: /s/ Margaret Q. Chapple
Margaret Q. Chapple
Assistant Attorney General
Federal Bar No. ct05550

BY: /s/ Lynn D. Wittenbrink
Lynn D. Wittenbrink
Assistant Attorney General
Federal Bar No. ct08575
110 Sherman Street
Hartford, CT 06105
Tel.: (860) 808-5450

CERTIFICATION

I hereby certify that a copy hereof was mailed this 23rd day of July, 1999, first class postage prepaid, to:

Ann Parrent
Connecticut Civil Liberties Union
32 Grand Street
Hartford, CT 06106

/s/ Lynn D. Wittenbrink
Lynn D. Wittenbrink
Assistant Attorney General

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

JOHN DOE
Plaintiff,

CIVIL ACTION NO.
3:99CV0314(RNC)

VS.

DR. HENRY LEE, ET AL.
Defendants

SEPTEMBER 13,1999

LOCAL RULE 9(C)2 STATEMENT
IN OPPOSITION TO PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT

A. Response to Plaintiff's Local Rule 9(c)1 Statement

1. Admitted

2. Admitted

3. It is admitted that as Commissioner of Public Safety, the defendant Commissioner Lee has certain responsibilities in connection with Public Act 98-111, as amended by Public Act 99-183. As the plaintiff alleges that those responsibilities are set forth in As Conn. Gen. Stat. §§ 54-250 *et seq*, and as Conn. Gen. Stat. §§ 54-150 *et seq* are statutory provisions, the defendants neither admit nor deny their content.

4. Admitted

5. Admitted

6. Admitted.

7. As the plaintiff alleges that the defendant Commissioner Armstrong has responsibilities in connection with registration of persons pursuant to As Conn. Gen. Stat. §§ 54-250 *et seq*, and as §§ 54-250 *et seq* are statutory

provisions, the defendants neither admit nor deny their content.

8. Admitted

9. Admitted

10. Admitted.

11. Admitted

12. Admitted.

13. Admitted.

14. Admitted.

15. Admitted.

16. Admitted

17. Admitted

18. Admitted.

19. Admitted.

20. It is admitted that Exhibit F provides a true and complete copy of the text of the Department of Public Safety Sex Offender Registry website along with a copy of the State of Connecticut Department of Public Safety website.

21. It is admitted that Exhibit G provides a true and complete copy of the text of the Department of Public Safety Sex Offender Registry website beginning in approximately late March, 1999, along with a copy of the State of Connecticut Department of Public Safety website.

22. Admitted.

23. Admitted.

24. Admitted

25. Admitted.

26. Admitted.

27. Admitted.

28. Admitted.

29. Admitted.

30. Denied.

31. Admitted.

32. Admitted.

B. Material Facts as to Which there is a Genuine Issue to Be Tried

1. A genuine issue of material fact exists as to whether or not the plaintiff has suffered an adverse consequence as a result of his name and criminal history information being made available Connecticut's Department of Public Safety website that is maintained in accordance with Public Act No. 98-111 as modified by Public Act 99-183.

2. A genuine issue of material fact exists as to the proximate cause of any ill effects the plaintiff claims to have suffered as a result of his name and criminal history information being made available Connecticut's Department of Public Safety website that is maintained in

accordance with Public Act No. 98-111 as modified by Public Act 99-183.

DEFENDANTS,
Dr. Henry C. Lee, et al.

RICHARD BLUMENTHAL
ATTORNEY GENERAL

BY: /s/ Lynn D. Wittenbrink
Lynn D. Wittenbrink
Assistant Attorney General
Federal Bar No. ct08575
110 Sherman Street
Hartford, CT 06105
Tel.: (860) 808-5450

CERTIFICATION

I hereby certify that a copy hereof was mailed this 13th day of September, 1999, first class postage prepaid, to:

Ann Parrent
Connecticut Civil Liberties Union
32 Grand Street
Hartford, CT 06106

/s/ Lynn D. Wittenbrink
Lynn D. Wittenbrink
Assistant Attorney General

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

JOHN DOE, on behalf of himself and all others similarly situated,	:	CIVIL NO. 3:99CV00314(RNC)
Plaintiffs,	:	
v.	:	November 14, 2000
DR. HENRY C. LEE, in his official capacity as Commissioner of Public Safety; WILLIAM CARBONE, in his official capacity as Director of the Office of Adult Probation and Director of the Court Support Services Division of the Judicial Department; and JOHN ARMSTRONG, in his official capacity as Commissioner of Correction,	:	
Defendants.	:	

PROPOSED FOURTH AMENDED CLASS ACTION COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Introduction

1. This action is brought by plaintiff John Doe, on behalf of himself and all others similarly situated, to challenge the constitutionality of the Connecticut law requiring the registration and public disclosure of information concerning persons designated as "sex offenders."

2. The statutory registration and disclosure law, codified at Conn. Gen. Stat. §§ 54-250 *et seq.*, designates persons convicted of certain specified offenses as "sexual offenders" who must register with the Department of Public Safety and provide certain identifying information.

3. In the name of public safety, the law provides for widespread public dissemination of information regarding persons designated as "sex offenders," including the publication of a physical description, photograph and current residence address on the internet. This system suggests to the public that Connecticut law enforcement officials have made a determination that persons designated as "sex offenders" pose a threat to the safety of the community. However, registration is required solely on the basis of a conviction for one of the offenses listed in the statute. Widespread dissemination of a person's designation as a "sex offender" and his identifying information occur without any assessment of whether the person in fact poses any danger to the community. As a result, persons designated as "sex offenders" are unfairly stigmatized and threatened with ostracism, threats to personal safety, loss of employment and housing opportunities, and other adverse consequences resulting from the public perception that they are currently dangerous sex offenders who pose a threat to the safety of the community.

4. John Doe is not a dangerous sexual offender and does not pose a threat of safety to the community.

5. This action seeks a declaratory judgment holding that the statutory registration and public disclosure scheme is unconstitutional and an injunction prohibiting its further enforcement on the ground that it deprives the plaintiff and the class members he seeks to represent of their rights as guaranteed by the Due Process Clause of

the Fourteenth Amendment to the United States Constitution and the Ex Post Facto Clause of the United States Constitution.

JURISDICTION AND VENUE

6. This action arises under 42 U.S.C. § 1983 and the Ex Post Facto Clause, Article I, Section 10, of the United States Constitution and the Fourteenth Amendment to the United States Constitution. The Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1343(4). Jurisdiction to grant a declaratory judgment is conferred by 28 U.S.C. §§ 2201 and 2202.

7. Venue is proper in this district under 28 U.S.C. § 1391.

PARTIES

Plaintiff

8. Plaintiff John Doe is a resident of the State of Connecticut who has been convicted of an offense that requires registration as a sexual offender pursuant to Conn. Gen. Stat. §§ 54-250 *et seq.* John Doe is a pseudonym that is being used in this case to protect the true identity of the plaintiff from public disclosure.

Defendants

9. Defendant Dr. Henry C. Lee is and has been the Commissioner of Public Safety since approximately June 1998. Defendant Lee is sued in his official capacity.

10. Pursuant to Conn. Gen. Stat. §§ 54-257(a) and 54-258(a)(1), the Department of Public Safety is responsible for establishing, maintaining and making publicly available a registry of all persons required to register as "sexual offenders."

11. Defendant William Carbone is and has been the Executive Director of the Court Support Services Division of the Judicial Department since September 25, 1998. Since April 2, 1999, defendant Carbone has held the position of Director of the Office of Adult Probation. As Director of the Office of Adult Probation, defendant Carbone's responsibilities are set forth in Conn. Gen. Stat. § 54-105. Defendant Carbone is sued in his official capacity.

12. Defendant John Armstrong is and has been the Commissioner of Correction since approximately January 1995. Defendant Armstrong is sued in his official capacity.

13. Pursuant to Conn. Gen. Stat. § 18-81, defendant Armstrong is responsible for the overall supervision and direction of all institutions, facilities and activities of the Department of Correction.

14. Pursuant to Conn. Gen. Stat. § 54-256, defendant Armstrong is responsible for requiring persons to register as required under Conn. Gen. Stat. §§ 54-250 *et seq.* prior to their release into the community.

15. At all times relevant hereto, the defendants acted under color of state law in connection with their enforcement of Conn. Gen. Stat. §§ 54-250 *et seq.*

CLASS ACTION ALLEGATIONS

16. The named plaintiff brings this action pursuant to Rule 23(a) and Rule 23(b)(2) of the Federal Rules of Civil Procedure on behalf of himself and all other persons similarly situated.

17. Plaintiff is a member of and seeks to represent two classes consisting of (1) all persons who are subject to the registration requirements of Conn. Gen. Stat. §§ 54-250 *et seq.* (the "due process class") and (2) all persons who are subject to the registration requirement of Conn. Gen. Stat. §§ 54-250 *et seq.* and whose convictions arise out of conduct that occurred prior to the effective date of the provisions requiring their registration and/or public dissemination of identifying information concerning them (the "ex post facto class").

18. The due process class is so numerous that joinder of all members is impracticable.

19. Upon information and belief, over 1,900 persons are currently subject to the registration requirements of Conn. Gen. Stat. §§ 54-250 *et seq.*

20. There are questions of law and fact common to the due process class, including the following:

a. Whether the members of the class have constitutionally protected liberty interests in not being designated as currently dangerous sexual offenders who pose a threat to public safety; and

b. Whether the conduct of the defendants has deprived members of the class of their liberty interests without due process of law in violation of the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

21. The claims of the named plaintiff are typical of the claims of the members of the due process class in that the constitutional deprivation caused by the conduct of the defendants is the same for the named plaintiff and all other members of the class.

22. The named plaintiff will fairly and adequately represent the interests of the members of the due process class.

23. The ex post facto class is so numerous that joinder of all members is impracticable.

24. Upon information and belief, most of the persons required to register under Conn. Gen. Stat. §§ 54-250 *et seq.* must register based on convictions arising out of conduct that occurred prior to the effective date of the applicable registration and/or public disclosure provisions.

25. There are questions of law and fact common to the ex post facto class, including the following:

a. Whether the registration and public disclosure provisions of Conn. Gen. Stat. §§ 54-250 *et seq.* retroactively impose punishment within the meaning of the Ex Post Facto Clause;

b. Whether the burdens associated with the registration and public disclosure provisions of Conn. Gen. Stat. §§ 54-250 *et seq.* are imposed for the purposes of punishment; and

c. Whether the registration and public disclosure provisions of Conn. Gen. Stat. §§ 54-250 *et seq.* are punitive in fact.

26. The claims of the named plaintiff are typical of the claims of the members of the ex post facto class in that the constitutional deprivation caused by the conduct of the

defendants is the same for the named plaintiff and all other members of the class.

27. The defendants have acted on grounds generally applicable to all members of both classes, thereby making appropriate injunctive and declaratory relief with respect to the class as a whole.

STATEMENT OF FACTS

A. Designation of Persons As Sex Offenders.

28. Persons convicted of certain specified offenses are designated as "sexual offenders" who must register with the Department of Public Safety. Conn. Gen. Stat. §§ 54-250 *et seq.*

29. Registration as a "sexual offender" is required solely on the basis of a conviction for one of the offenses enumerated in the statute. Conn. Gen. Stat. §§ 54-251(a), 54-252(a), 54-252(b), 54-253(a).

30. Persons required to register as sexual offenders are obligated to provide their name, residence address, criminal history record, fingerprints, a photographic image, and a description of such other identifying characteristics as may be required by the Commissioner of Public Safety. Conn. Gen. Stat. §§ 54-250(3), 54-251(a), 54-252(a), 54-252(b), 54-253(a).

31. The Department of Public Safety does not conduct any assessment as to whether or not an individual poses any threat to the safety of the community in order to determine whether or not that person is required to register pursuant to Conn. Gen. Stat. §§ 54-250 *et seq.*

32. Upon information and belief, consistent with Conn. Gen. Stat. § 54-1421, the Department of Public Safety has a procedure in place to respond to challenges to the accuracy or completeness of conviction records of persons believed to be subject to the registration requirements pursuant to Conn. Gen. Stat. §§ 54-250 *et seq.* Other than that, the Department of Public Safety does not have statutory authority to exercise any discretion in determining whether individuals must register or whether they may be excused from registering pursuant to Conn. Gen. Stat. §§ 54-250 *et seq.*

33. The Office of Adult Probation has and continues to require persons subject to its supervision to register pursuant to Conn. Gen. Stat. §§ 54-250 *et seq.*

34. The Office of Adult Probation does not conduct any assessment of persons subject to its supervision regarding any threat an individual poses to the safety of the community in order to determine whether or not a person is subject to the registration requirements of Conn. Gen. Stat. §§ 54-250 *et seq.*

35. The Department of Correction has required and continues to require some of the persons subject to its supervision to register pursuant to Conn. Gen. Stat. §§ 54-250 *et seq.* and 54-102g.

36. The Department of Correction does not conduct any assessment as to whether or not an individual poses any threat to the safety of the community in order to determine whether or not that person is required to register pursuant to Conn. Gen. Stat. §§ 54-250 *et seq.*

B. Duration of Sex Offender Registration Requirements.

37. Persons convicted of a single offense defined as a "criminal offense against a victim who is a minor" or a "nonviolent sexual offense" must register for at least ten years. Conn. Gen. Stat. § 54-251(a).

38. Lifetime registration is required for persons convicted of a "criminal offense against a victim who is a minor" or a "nonviolent sexual offense" who have one or more prior convictions for any such offense and for persons convicted of first-degree sexual assault for engaging in sexual intercourse with another person and such other person is under thirteen years of age and the actor is more than two years older than such person. Conn. Gen. Stat. § 54-251(a).

39. Lifetime registration is required for persons convicted of any offense defined as a "sexually violent offense." Conn. Gen. Stat. §§ 54-252(a).

40. Lifetime registration is required for persons subject to the registration requirements under earlier versions of the sex offender registration law, except for those who qualify for court-ordered exemption from registration. Conn. Gen. Stat. §§ 54-251(b)-(c), 54-252(a).

41. The only persons who qualify for court-ordered exemption from registration are (1) persons under nineteen years of age at the time of the offense convicted of sexual assault in the second degree for engaging in sexual intercourse with another person and such other person is thirteen years of age or older but under sixteen years of age and the actor is more than two years older than such person and (2) persons convicted of sexual assault in the

fourth degree for subjecting another person to sexual contact without such other persons' consent. Conn. Gen. Stat. § 54-251(b)-(c).

C. Requirement of Blood Sample for DNA Analysis from Persons Designated as Sex Offenders.

42. Persons required to register as "sexual offenders" are required to submit a blood sample for DNA (deoxyribonucleic acid) analysis, unless such a sample has been previously obtained in accordance with Conn. Gen. Stat. § 54-102g. Conn. Gen. Stat. § 54-250(3).

43. Persons required to register as "sexual offenders" are subject to prosecution for a class D felony if they do not submit to having a blood sample taken for DNA analysis. Conn. Gen. Stat. §§ 54-251(d), 54-252(d), 54-253(c).

44. The Department of Public Safety maintains a databank of DNA characteristics of persons designated as "sexual offenders." Conn. Gen. Stat. § 54-102g(d).

45. Upon information and belief, the Department of Public Safety does not require persons other than those designated as "sexual offenders" to submit to having blood samples taken for inclusion in a databank of identification characteristics of profiles resulting from DNA analysis.

46. Upon information and belief, persons other than those required to register as "sexual offenders" are not subject to felony prosecution for refusing to provide a blood sample to the State of Connecticut for inclusion in a databank of identification characteristics of profiles resulting from DNA analysis.

D. Continuing Legal Obligations of Persons Designated as Sex Offenders.

47. Persons required to register as "sexual offenders" are subject to possible felony prosecution for failure to comply with the legal obligations imposed by Conn. Gen. Stat. §§ 54-250 *et seq.*

48. Failure to comply with the registration provisions subjects persons required to register as "sexual offenders" to possible prosecution for a class D felony. Conn. Gen. Stat. §§ 54-251(d), 54-252(d), 54-253(c).

49. Persons required to register as "sexual offenders" must comply with address verification procedures for their entire registration period, unless registration is suspended by the Department of Public Safety while the person is incarcerated, under civil commitment, or residing outside Connecticut. Conn. Gen. Stat. § 54-257(b)-(c).

50. Persons required to register under Conn. Gen. Stat. §§ 54-251 or 54-254 must submit an address verification form annually after their initial registration dates. Conn. Gen. Stat. § 54-257(c).

51. Persons required to register under Conn. Gen. Stat. § 54-252 must submit an address verification form every ninety days after their initial registration dates. Conn. Gen. Stat. § 54-257(c).

52. Failure to return address verification forms or providing false registration information subjects registrants to possible arrest and prosecution for a class D felony. Conn. Gen. Stat. § 54-257(c).

53. All persons required to register who change their address are required to register the new address in writing with the Commissioner of Public Safety within five days of the change. Conn. Gen. Stat. §§ 54-251(a), 54-252(a).

54. Failure to register a new address with the Commissioner of Public Safety within five days subjects registrants to possible arrest and prosecution for a class D felony. Conn. Gen. Stat. §§ 54.251(d), 54-252(d), 54-253(c).

55. Upon information and belief, the State of Connecticut does not impose registration requirements with criminal penalties on persons with criminal convictions who have completed their sentences other than persons required to register pursuant to Conn. Gen. Stat. §§ 54-250 *et seq.*

56. Upon information and belief, persons other than those required to register pursuant to Conn. Gen. Stat. §§ 54-250 *et seq.* are not subject to possible arrest and felony prosecution for failure to provide current residence information on an ongoing basis to the State of Connecticut.

57. Upon information and belief, persons other than those required to register pursuant to Conn. Gen. Stat. §§ 54-250 *et seq.* are not subject to possible arrest and felony prosecution for failure to have a photograph taken by the Department of Public Safety.

E. Public Dissemination of Information Regarding Persons Designated as Sex Offenders.

58. Upon receipt of registration information, the Department of Public Safety is responsible for entering this information into a registry of persons required to register as "sexual offenders." Conn. Gen. Stat. § 54-257(a).

59. The sex offender registry must be made accessible to the public at the Department of Public Safety, each local police department, and each state police troop in Connecticut. Conn. Gen. Stat. § 54-258(a)(1).

60. The Department of Public Safety is also required to make registry information available to the public through the Internet. Conn. Gen. Stat. § 54-258(a)(1).

61. The Department of Public Safety is required to issue notices, not less than once per calendar quarter, to all print and electronic media in Connecticut regarding the availability and means of accessing the sex offender registry. Conn. Gen. Stat. § 54-258(a)(1).

62. The Department of Public Safety sex offender registry website includes registration information regarding all persons who register pursuant to Conn. Gen. Stat. §§ 54-250 *et seq.*, except for those who qualify for court-ordered restriction on dissemination of registration information.

63. Upon a conviction or finding of not guilty by reason of mental disease or defect, the Court may order the Department of Public Safety to restrict the dissemination of registration information for law enforcement purposes and not make it available to the public for

certain registrants if the court finds that dissemination of the information would be likely to reveal the identity of the victim within the community where the victim resides and dissemination is not required for public safety. Conn. Gen. Stat. § 54-255(a)-(b).

64. The court authority to order restricted dissemination of registration information upon a conviction or finding of not guilty by reason of mental disease or defect applies to persons who meet one of the following descriptions:

a. persons convicted or found not guilty by reason of mental disease or defect of the class B felony of sexual assault in a spousal or cohabiting relationship, Conn. Gen. Stat. § 54-255(a); or

b. Persons convicted or found not guilty of any offense requiring registration where the victim of such offense was, at the time of the offense, under eighteen years of age and related to such person within any of the degrees of kindred specified in Conn. Gen. Stat. § 46b-21, Conn. Gen. Stat. § 54-255(b).

65. Certain persons convicted or found not guilty by reason of mental disease or defect of offenses between October 1, 1988 and June 30, 1999 may petition the court to order the Department of Public Safety to restrict the dissemination of registration information for law enforcement purposes and not make it available to the public for certain registrants. Conn. Gen. Stat. § 54-255(c).

66. The court authority to order restricted dissemination of information for persons convicted or found not guilty of an offense between October 1, 1988 and June 30,

1999 applies to persons who meet one of the following descriptions:

a. Persons convicted or found not guilty by reason of a mental disease or defect of engaging in sexual intercourse with another person and such other person is thirteen years of age or older but under sixteen years of age and the actor is more than two years older than such person and under nineteen years of age at the time of offense, Conn. Gen. Stat. § 54-255(c)(1);

b. Persons convicted or found not guilty by reason of a mental disease or defect of subjecting another person to sexual contact without such other person's consent, Conn. Gen. Stat. § 54-255(c)(2);

c. Persons convicted or found not guilty by reason of a mental disease or defect of any offense requiring registration where the victim of such offense was, at the time of the offense, under eighteen years of age and related to such person within any of the degrees of kindred specified in Conn. Gen. Stat. § 46b-21, Conn. Gen. Stat. § 54-255(c)(3);

d. Persons convicted or found not guilty by reason of a mental disease or defect of sexual assault in a spousal or cohabiting relationship, Conn. Gen. Stat. § 54-255(c)(4); or

e. Persons convicted or found not guilty by reason of a mental disease or defect of any crime which requires registration when the offender (i) served no jail or prison time as a result of such conviction or finding of not guilty by reason of mental disease or defect, (ii) has not been subsequently convicted or found not guilty by reason of mental disease or defect of any crime which

would require registration, and (iii) has registered with the Department of Public Safety, Conn. Gen. Stat. § 54-255(c)(5).

67. As a condition of ordering that a person's registration information not be made available for public access pursuant to Conn. Gen. Stat. § 54-255(c), the court must find that the dissemination of the information is not required for public safety. Conn. Gen. Stat. § 54-255(c).

68. The statute does not provide any standards for a court to determine when dissemination of registration information is or is not required for public safety.

69. The Department of Public Safety sex offender registry does not provide sufficient information for members of the public to determine whether any particular person who appears on the registry poses a threat to public safety.

F. Community Notification Regarding Sex Offenders.

70. Upon receipt of registration information, the Department of Public Safety is responsible for notifying the local police department or state police troop having jurisdiction where the registrant resides or plans to reside. Conn. Gen. Stat. § 54-257(a).

71. Any state agency, the Judicial Department, any state police troop or any local police department are authorized to notify any government agency, private organization or individual of any registration information when such agency, said Department, such troop or local police department believes such notification is necessary to protect the public or any individual in any jurisdiction

from any person who is subject to registration. Conn. Gen. Stat. § 54-258(a)(2).

72. Conn. Gen. Stat. §§ 54-250 *et seq.* does not provide any standards to determine the circumstances when notification is necessary to protect the public or any individual in any jurisdiction pursuant to Conn. Gen. Stat. § 54-258(a)(2).

73. Upon information and belief, the Department of Public Safety does not have a procedure to permit registrants to contest the necessity of notification to protect the public or any individual in any jurisdiction from the registrant.

74. Upon information and belief, the Office of Adult Probation has a practice of notifying members of the public regarding certain persons subject to the supervision of the Office of Adult Probation for purposes of public safety.

75. Upon information and belief, other than a court hearing dealing with the issue of notification by the office of Adult Probation of members of the community with regard to an individual under the supervision of the Office of Adult Probation, there is no formal procedure afforded by the Office of Adult Probation for contesting the necessity of notification to members of the community regarding a person convicted of a sexual offense with whom they may have contact.

G. Public Perception of Sex Offender Designation.

76. The system of designating persons as "sex offenders" as described above suggests to the public that

Connecticut law enforcement officials have determined that persons so designated pose a threat to public safety.

77. However, registration is required solely on the basis of a conviction for one of the offenses listed in the statute. Widespread dissemination of a person's designation as a "sex offender" and his identifying information occur without any assessment of whether the person in fact poses any danger to the community.

78. Persons designated as "sex offenders" are unfairly stigmatized and threatened with the adverse consequences resulting from the public perception that they are currently dangerous sex offenders who pose a threat to the safety of the community.

Irreparable Harm to Plaintiff and Class Members

79. The defendants' enforcement of Conn. Gen. Stat. §§ 54-250 *et seq.* threatens the plaintiff and the members of the classes he seeks to represent with continuing irreparable injury for which there is no adequate remedy at law, including the following:

a. Plaintiff and the members of the due process class are being publicly branded as currently dangerous sex offenders who pose a threat to public safety regardless of whether there is any basis for such an assessment;

b. Plaintiff and the members of the due process class do not have a constitutionally sufficient means of contesting their designation in the eyes of the public as currently dangerous sex offenders who pose a threat to public safety;

c. Plaintiff and the members of the ex post facto class are suffering punishment that was not authorized by the law as it existed at the time of the conduct resulting in their convictions;

d. Plaintiff and the members of both classes face possible felony prosecution if they fail to comply with the registration or address verification requirements of Conn. Gen. Stat. §§ 54-250 *et seq.*;

e. Plaintiff and the members of both classes face possible felony prosecution if they fail to comply with the requirement that they submit to having a blood sample taken for DNA analysis; and

f. Plaintiff and the members of both classes are threatened with a multitude of possible adverse consequences resulting from being branded as currently dangerous sex offenders, including shame, humiliation, ostracism, loss of employment, decreased employment opportunities, interference with business opportunities, loss of housing, interference with family and social relationships, and possible physical harm inflicted by members of the public who believe that plaintiff and the class members pose a threat to public safety.

80. Unless the defendants are enjoined from further enforcement of Conn. Gen. Stat. §§ 54-250 *et seq.*, plaintiff and the class members will continue to suffer irreparable injury for which there is no adequate remedy at law.

First Cause of Action

81. Paragraphs 1 through 80 are realleged as if fully set forth herein.

82. Plaintiff and the members of the due process class have constitutionally protected liberty and property interests in not being falsely designated as currently dangerous sex offenders who pose a threat to public safety.

83. The liberty and property interests of the plaintiff and the members of the due process class arise under the First, Fourth, Ninth and Fourteenth Amendments to the United States Constitution and Article First, sections 7, 8, 9, and 10, of the Connecticut Constitution.

84. The conduct of the defendants has stigmatized the plaintiff and the members of the due process class as currently dangerous sex offenders without any procedure to determine whether there is any factual basis for labeling plaintiff and the class members as a threat to public safety.

85. The conduct of the defendants has deprived and threatens to deprive the plaintiff and the members of the due process class of their constitutionally protected liberty and property interests without due process of law in violation of the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

Second Cause of Action

86. Paragraphs 1 through 85 are realleged as if fully set forth herein.

87. Plaintiff and the members of the ex post facto class have convictions arising out of conduct that occurred prior to the enactment of the registration and public disclosure provisions that apply to them.

88. The registration and public disclosure provisions of Conn. Gen. Stat. §§ 54-250 *et seq.* impose punishment in violation of the Ex Post Facto Clause, Article I, Section 10, of the United States Constitution.

89. The registration and public disclosure provisions of Conn. Gen. Stat. §§ 54-250 *et seq.* are punitive in that they provide for widespread public dissemination of the designation of persons as "sex offenders" based solely on the existence of a conviction for an offense enumerated in the statute without any assessment of whether the person poses a threat to public safety.

90. The conduct of the defendants has deprived the plaintiff and members of the ex post facto class of their rights protected by the Ex Post Facto Clause.

WHEREFORE, plaintiff requests the following relief:

1. A declaratory judgment holding that Conn. Gen. Stat. §§ 54-250 *et seq.* violates the Due Process Clause of the Fourteenth Amendment to the United States Constitution;

2. A declaratory judgment holding that Conn. Gen. Stat. §§ 54-250 *et seq.* violates the Ex Post Facto Clause of the United States Constitution;

3. A preliminary and permanent injunction prohibiting defendants, their employees, agents and successors in office from further enforcement of the registration and public disclosure provisions of Conn. Gen. Stat. §§ 54-250 *et seq.*;

4. A preliminary and permanent injunction prohibiting defendants, their employees, agents and successors in office from further public disclosure of the information

compiled in the Department of Public Safety sex offender registry;

5. A preliminary and permanent injunction requiring defendants, their employees, agents and successors in office to notify all other governmental entities to which information compiled in the Department of Public Safety sex offender registry has previously been transmitted that they must refrain from further public disclosure of such information;

6. An award of plaintiff's costs and attorneys' fees pursuant to 42 U.S.C. § 1988, and

7. Such other and further relief as this Court deems necessary and proper.

/s/ Shelley R. Sadin
Shelley R. Sadin
Federal Bar No. ct05090
Zeldes, Needle & Cooper
1000 Lafayette Blvd.
P.O. Box 1740
Bridgeport, Connecticut 06604
Telephone (203) 333-9441
Facsimile (203) 333-1489
e-mail ssadin@znclaw.com

/s/ Philip D. Tegeler
Philip D. Tegeler, Esq.
Connecticut Civil Liberties
Union Foundation
32 Grand Street
Hartford, Connecticut 06106
Telephone (860) 247-9832
Facsimile (860) 728-0287

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

JOHN DOE, Plaintiff,	:	
V.	:	CASE NO. 3:99CV0314(RNC)
DR. HENRY C. LEE, ET AL., Defendants.	:	

RULING AND ORDER ON
CROSS-MOTIONS FOR SUMMARY JUDGMENT

Plaintiff brings this action challenging the constitutionality of the Connecticut sex offender registry act ("CT-SORA"), which requires registration by, and public disclosure of information concerning, persons designated as "sexual offenders." Plaintiff claims that the statute, commonly referred to as Connecticut's Megan's Law, deprives him of a protected liberty interest in violation of the Fourteenth Amendment's Due Process Clause and, as applied to him, violates the Constitution's Ex Post Facto Clause. Cross-motions for summary judgment have been filed on potentially dispositive legal issues regarding liability.[1] The parties agree that two issues can be decided on the record presented at this stage: (1) whether the CT-SORA imposes a "stigma" on registrants for purposes of the "stigma plus" test used to establish a liberty interest

[1] Plaintiff's Fourth Amended Complaint contains class action allegations as to both claims. The parties agree that class certification issues should not be decided until after the issues presented by the cross-motions are resolved.

protected by the Due Process Clause; and (2) whether the statute violates the Ex Post Facto Clause.[2]

Plaintiff's motion for summary judgment on the due process claim is granted essentially because the undifferentiated nature of the registry stigmatizes nondangerous registrants by grouping them together with dangerous registrants.[3] Plaintiff alleges that he is not dangerous; the registry system alters his legal status (thereby satisfying the "plus" element of the stigma plus test); and the State provided no procedure to determine whether plaintiff is currently dangerous before including him in the registry. Defendants' motion for summary judgment on the ex post facto claim is granted because the legislature did not enact the CT-SORA with punitive intent and the law's effects are not so punishing as to render it punitive in fact. Because the parties have not yet addressed remedies, no ruling is made as to remedy at this time.

[2] Plaintiff contends that the remaining aspects of the due process claim can be decided at this time as well. Defendants disagree.

[3] By undifferentiated I mean a system like Connecticut's, which places all registrants in one class for notification purposes – "sex offender" – without attempting any individualized assessment of their dangerousness or likelihood of reoffense. One commentator has termed systems without individualized risk assessment "compulsory" registries and has calculated that nineteen states have adopted such systems. *See* Wayne A. Logan, *A Study in "Actuariol Justice: Sex Offender Classification Practice and Procedure,"* 3 *Buff. Crim. L. Rev.* 593, 603 (2000) The remaining states and the District of Columbia use approaches that involve the exercise of varying degrees of discretion on the part of classifying authorities. *See id.* at 606-19. An example of a differentiated, or classified, system is New York's three-tier system, described in *Doe v. Pataki*, 120 F.3d 1263, 1266-70 (2d Cir. 1997).

Background

A. The Statutory Scheme

In 1998 and 1999, the Connecticut legislature revised the State's version of Megan's Law in ways that spawned this lawsuit. *See* Public Acts No. 98-111 & 99-183 (codified as C.G.S. §§ 54-250 to -261) (collectively referred to as the "CT-SORA").[4]

Registration Obligations

Under the CT-SORA, persons who have been convicted or found not guilty by reason of mental disease or defect of enumerated offenses must register with the Commissioner of Public Safety ("Commissioner") within three days of their release into the community. All registrants must provide the same information: name, residence address, criminal history record, fingerprints, a photograph, and a description of such other identifying characteristics as the Department of Public Safety ("DPS") requires (such as scars and tattoos). If a registrant moves, he must notify the Commissioner in writing of the new address within five days.[5] Registrants must also complete

[4] Federal law conditions a state's receipt of certain federal law enforcement grants on the creation of a sex offender registry program. *See* 42 U.S.C. § 14071. Among other things, a state must register persons convicted of certain offenses and provide the information to the F.B.I. and local law enforcement. The federal law requires that the information be released to the extent necessary to protect the public from specific individuals but does not require a state to apply its program retroactively.

[5] If the registrant moves to another state, he must contact and register with any sexual offender registry agency in the other state. Similarly, if a registrant regularly travels to or temporarily resides in

(Continued on following page)

and return address verification forms sent to them by the Commissioner and submit to the retaking of a photograph at least every five years. Failure to comply with the requirements of the CT-SORA is a class D felony, punishable by up to five years in jail.

The statute applies to persons convicted of four types of offenses: criminal offenses against a victim who is a minor; nonviolent sexual offenses; violent sexual offenses; and felonies committed for sexual purposes. The burdens imposed on registrants vary depending on the type of offense committed. Some offenders are obligated to maintain their registrations for life,[6] while others must do so for ten years.[7] Registrants must complete and return address verification forms either annually[8] or every ninety days.[9]

The DPS is required to maintain a central registry of the information submitted by sex offenders. On receipt of an individual's information, the DPS is required to provide

another state, he must inform the Commissioner and notify the registry agency in the other state.

[6] Life registrants include persons who were required to register under the pre-1998 version of the CT-SORA; persons who have committed violent sexual offenses; and persons who have committed a second criminal offense against a minor or nonviolent sexual offense.

[7] Ten-year registrants include persons convicted for the first time of an offense against a minor or a nonviolent sexual offense, as well as persons who have committed a felony for a sexual purpose.

[8] Persons who have committed offenses against a minor, nonviolent sexual offenses, or felonies with sexual purposes are subject to annual verification.

[9] Persons who have committed violent sexual offenses must return forms every ninety days.

it to local law enforcement officials with jurisdiction over the registrant's address.[10]

Public Disclosure

The DPS must make the registry available to the public in a number of ways.[11] First, the central registry maintained at the DPS must be available to the public during regular business hours. Second, local law enforcement agencies must make the information that DPS has transmitted to them available during business hours. Third, the DPS is required to make the registry information available over the Internet. Finally, the DPS must annually remind the state's media that the registry exists and provide them with information on how it can be accessed. *See* C.G.S. § 54-258(a)(1).

An uncodified provision of P.A. 99-183 requires that any dissemination of the registry be accompanied by the

[10] If the registrant's address is in another state, the DPS must provide the information to the registry agency in the other state. *See* C.G.S. § 54-257(a). For all registrants, the DPS must transmit all registration information, conviction data, photographs, and fingerprints to the F.B.I. *See id.*

[11] The CT-SORA does not require proactive community notification regarding any registrant's information. However, "[a]ny state agency, the Judicial Department, any state police troop or any local police department may, at its discretion, notify any government agency, private organization, or individual of registration information when such agency, said department, such troop or such police department, as the case may be, believes such notification is necessary to protect the public or any individual in any jurisdiction from any person who is subject to registration." *See* C.G.S. § 54-258(a)(2). The CT-SORA provides no guidelines for how these entities are to exercise their discretion.

following warning: "Any person who uses information in this registry to injure, harass or commit a criminal act against any person included in the registry or any other person is subject to criminal prosecution." P.A. 98-183 § 10.

Exemption, Limitation, or Suspension of Registration

Two narrow classes of offenders may be completely exempted from the obligation to register if a court finds that registration is not necessary to protect the public. *See* C.G.S. § 54-251(b), (c).[12]

The registry data of select other offenders may be restricted by court order to use for law enforcement purposes only.[13] For any of these offenders, the court may

[12] Persons convicted of fourth-degree sexual assault for subjecting another person to sexual contact without consent are eligible for exemption, as are persons who were under 19 at the time of their offense and were convicted of having sexual intercourse with someone who was (1) more than two years younger than they and (2) between the ages 13 and 16 at the time of the offense.

[13] There are two ways an offender's information can become restricted. First, when the registrant's offense is sexual assault in a spousal or cohabitating relationship, *see* C.G.S. 53a-70b, or an offense against a person who, at the time of the offense, was under 18 and living in the registrant's household, the court can restrict access to law enforcement if it finds that public dissemination would likely reveal the identity of the victim. *See* C.G.S. § 54-255(a).

Second, certain registrants are entitled to petition for such an order. This right of petition is available to (1) registrants who committed specific offenses between October 1, 1988, and June 30, 1999, regardless of their sentence or subsequent criminal history; and (2) any registrant convicted between October 1, 1988, and September 30, 1998, of any offense requiring registration if he served no jail time as a result of the conviction, has not been subsequently convicted of an offense that

(Continued on following page)

enter an order restricting dissemination of registry information only after finding that public safety does not require general public access to the information.

Finally, a person's registration is suspended if he becomes incarcerated or civilly committed or takes up residence in another state. *See* C.G.S. § 54-257(b).

B. Additional Undisputed Facts

The DPS has a procedure in place to respond to challenges to the accuracy or completeness of registry information, but otherwise has no discretion in determining whether individuals must register. Moreover, none of the agencies involved in the registration process (i.e., the DPS, the Department of Corrections, or the Office of Adult Probation) conducts any individualized assessment of the public safety threat posed by an individual when deciding whether he must register.

C. The Web Site

The DPS Sex Offender Registry web site permits any Internet user visiting the site to search and display the information contained in the registry database. The database can be searched by last name, the first letter of a last name, a town name, or a zip code. Searching by a town or zip code provides a list of the names of all registrants living in that area.

---

requires registration, and has been registered with the DPS as required by the CT-SORA. *See* C.G.S. § 54-255(c).

Clicking on a listed name brings up a web page entitled "Registered Sex Offender." If the registrant has complied with the CT-SORA's requirements, there have been no technical difficulties, and the DPS has had time to process and post the registrant's information, this page contains the registrant's name, offense, current residence address, physical description and photograph.

At the time the parties filed their briefs, the front page of the web site included the following language:

> This information is made available for the purpose of complying with Connecticut General Statutes § 54-250 et seq., which requires the Connecticut Department of Public Safety to establish and maintain a registry of persons who are required to register under sections 54-250 through 54-254 of the General Statutes. [Those statutes require that certain individuals be included in the registry because of their conviction or finding of not guilty by reason of mental disease or defect of a specified criminal offense and subsequent release into the community on or after October 1, 1988.] The registry is based on the legislature's decision to facilitate access to publicly-available information about persons convicted of sexual offenses. The Department of Public Safety has not considered or assessed the specific risk of reoffense with regard to any individual prior to his or her inclusion within this registry, and has made no determination that any individual included in the Registry is currently dangerous. Individuals included within the registry are included solely by virtue of their conviction record and state law. The main purpose of providing this data on the Internet is to make the information more easily available and

> accessible, not to warn about any specific individual. Anyone who uses this information to injure, harass, or commit a criminal act against any person included in the registry or any other person is subject to criminal prosecution.

D. The Plaintiff

Plaintiff is required to register under the CT-SORA. He alleges in the Fourth Amended Complaint that he is not a dangerous sexual offender and does not pose a threat to the safety of the community. Defendants contend that all the information on the CT-SORA web site regarding plaintiff is accurate and that he provided the information regarding his birth date, address, physical description, criminal offenses, and other identifying information. Plaintiff does not contend that any piece of data is inaccurate.

Discussion

I. Due Process Claim

Plaintiff claims the CT-SORA violates the Due Process Clause of the Fourteenth Amendment. To succeed on this procedural due process claim, plaintiff must demonstrate (1) that the CT-SORA deprives him of a constitutionally protected liberty interest; and (2) that the procedures attending the deprivation are inadequate. *See Kentucky Dep't of Corrections v. Thompson*, 490 U.S. 454, 460 (1989).

[14] Since the briefs were filed, the DPS has modified the format of the front page and the language quoted in the text no longer appears as a single paragraph; however, the substance of the quoted paragraph remains on the front page.

To establish a protected liberty interest, plaintiff must satisfy the "stigma plus" test applied in the Second Circuit. *See Valmonte v. Bane*, 18 F.3d 992, 999 (2d Cir. 1994); *Doe v. Pataki*, 3 F.Supp. 2d 456, 467 (S.D.N.Y. 1998).

Plaintiff prevails on the due process claim because the State has not provided him with any opportunity to challenge the stigmatizing allegation, implied by his inclusion in the publicly available registry, that he is a dangerous sex offender. The implied allegation, which plaintiff contends is false, arises from the undifferentiated nature of the registry, in which dangerous and nondangerous registrants are grouped in a single classification and no information is provided regarding any registrant's dangerousness. Because there can be no doubt that some registrants are dangerous, Connecticut's single classification falsely suggests that nondangerous registrants are a threat to public safety. In addition to falsely stigmatizing nondangerous registrants, the CT-SORA alters their legal status under state law.[15]

[15] Defendants suggest that the undifferentiated nature of the registry requires rejection of plaintiff's due process claim because a hearing would not serve any useful purpose. *See, e.g.* Defs.' Mem. at 20-21, 30-31. However,

> the fact that a particular jurisdiction's registration and notification scheme does not differentiate among offenders, and thus relies exclusively upon blanket legislative assessment of community danger, should not alter the liberty interest analysis. The constitutional question is not whether offender differentiation is contemplated by the particular statutory scheme in question; rather, it is whether a liberty interest exists sufficient to warrant due process protection.

(Continued on following page)

A. Stigma

Plaintiff first must prove that his "inclusion in the [publicly disseminated sex offender registry] will result in stigma, that is, in 'public opprobrium' and damage to [his] reputation." *Valmonte v. Bane*, 18 F.3d 992, 999 (2d Cir. 1994) (quoting *Bohn v. County of Dakota*, 772 F.2d 1433, 1436 n.4 (8th Cir. 1985)). Plaintiff contends that he is stigmatized because his inclusion in the registry conveys the false message that he is a dangerous sex offender and a threat to public safety. Defendant contends that the registry sends no message about a registrant's dangerousness and communicates only the admittedly accurate information that plaintiff has been convicted of a crime requiring registration.

When, as here, a plaintiff seeks not damages but rather an opportunity to be heard in order to establish that a communication about him is false, the plaintiff need only allege – not prove – that the communication at issue is not true. *See Brandt v. Board of Coop. Ed. Servs.*, 820 F.2d 41, 42-44 (2d Cir. 1987) (citing *Codd v. Velger*, 429 U.S. 624, 627 (1977) (finding plaintiff's action for name-clearing hearing fatally deficient because of failure to contend that employer's communication was false).[16]

Wayne A. Logan, *Liberty Interests in the Preventive State: Procedural Due Process and Sex Offender Community Notification Laws*, 89 *J. Crim. L. & Criminology*, 1167, 1210-11 (1999).

[16] *Kelly Kare, Ltd. v. O'Rourke*, 930 F.2d 170, 177 (2d Cir. 1991), which states that "plaintiff must establish that the information was stigmatizing, false, and publicized by the state actor," is not to the contrary. *Kelly Kare* cited *Brandt* as the primary authority for the quoted proposition and indicated no disagreement with the distinction made by *Brandt* between actions for damages and actions seeking a

(Continued on following page)

Accordingly, to establish that the CT-SORA implicates a liberty interest, plaintiff must establish that the charge against him is stigmatizing, that he alleges it to be false, and that a plus factor is present. Plaintiff satisfies the allegation-of-falsity element by the amendment to his complaint approved today in a separate order. *See* Fourth Am. Compl. ¶ 4.

The stigma question thus becomes whether, assuming plaintiff is not dangerous, public dissemination of the sex offender registry conveys the erroneous message that he is. The answer to this question must be yes. Despite the accuracy of the registry data concerning the plaintiff and the statement on the web site that no determination of any individual's dangerousness has been made, the registry suggests that plaintiff is currently dangerous. Specifically, the undifferentiated nature of the registry and the undisputed purposes of the CT-SORA make it reasonable for a viewer of the registry to conclude that any particular registrant is dangerous.[17]

---

name-clearing hearing. While the *Kelly Kare* plaintiff did seek an injunction, the decision in that case did not turn on whether the plaintiff had alleged or proven falsity. Rather, the court found that, because the county had been silent as to the reason for its termination of Kelly Kare's contract, there was no communication that could be seen as stigmatizing or false.

[17] Plaintiff contends that the registry's availability on the Internet is by itself an additional contextual factor that conveys the message that registrants are dangerous. Governmental use of the Internet to disseminate information is now common place, however, and no special message should be associated with the registry simply because it can be accessed via the Internet. Adopting plaintiff's position would prohibit the State from taking information that is already publicly available in its compiled form and making it more readily available.

The stated purposes of the CT-SORA are to protect the public and facilitate law enforcement.[18] Registration and dissemination serve these goals only because some registrants are likely to reoffend. Thus, the message that some registrants are currently dangerous is, and is intended to be, communicated to viewers of the registry.

A person viewing any one registrant's information is told that the State has not assessed the registrant's risk of reoffense and has not determined whether he is currently dangerous. While it is true, then, that the viewer has no reason to think the registrant is one of those who is dangerous, the viewer also has no reason to think the registrant is not dangerous. Because there is no classification system, the viewer has neither absolute nor relative information regarding the dangerousness of the registrant. Without such information, the viewer could reasonably conclude that the registrant is likely to reoffend.

Defendants do not dispute that within the group of persons required to register as sex offenders there is significant variation in the likelihood of particular offenders committing another "sex offense."[19] This variation is

[18] Defendants contend that these are the statute's purposes. Plaintiff has provided numerous news articles supporting his contention that the State has contributed to public understanding of these purposes through statements made by the Governor, legislators, the Commissioner, and other officials.

[19] This is particularly true for the Connecticut system, under which some of the "sex offenses" do not require any sexual conduct by the registrant. These nonsexual sex offenses include various degrees of kidnapping and unlawful restraint when the victim is under 18. While these offenses are classified by the statute as criminal offenses against a minor rather than as violent or nonviolent sexual offenses, registrants

(Continued on following page)

presumably the reason why other states have adopted a tiered registry and notification system, under which sex offenders are subgrouped according to their individually assessed risk of reoffense. *See Doe v. Pataki*, 3 F.Supp. 2d 456, 462 (S.D.N.Y. 1998) (describing the New York system, which has low-, moderate-, and high-risk classes). In a tiered system, a recipient of a registrant's information can discern the dangerousness of that registrant relative to the universe of sex offenders. By omitting to provide such relative information, Connecticut's system has the effect of falsely suggesting that nondangerous registrants are in fact dangerous.[20]

B. Plus Factors

Damage to reputation, without more, is insufficient to establish a liberty interest protected by the Due Process Clause. The stigmatizing conduct must be accompanied by some tangible injury or material alteration of legal right or status. *See Paul v. Davis*, 424 U.S. at 701, 708; *Valmonte v. Bane*, 18 F.3d at 999-1000. Plaintiff satisfies this plus element because the registration requirements of the CT-SORA alter his legal status under state law.

The CT-SORA requires registrants to appear at the Department of Public Safety to register or undergo registration processes before their release from incarceration.

convicted of these offenses are still grouped under the label "sex offender."

[20] *Cf. Doe v. Pryor*, 61 F. Supp. 2d 1224, 1231 (M.D. Ala. 1999) (noting that community notification "strongly implies that [a registrant] is a likely recidivist and a danger to his community.")

For at least ten years after that, and possibly for life, a registrant must maintain his registration by completing forms periodically mailed to him by the Department and appearing at the DPS to have his photograph taken at least every five years. During his registration period, a registrant must promptly inform the DPS any time he moves or if he regularly travels to or temporarily resides in another state. If a registrant does move to, regularly travel to, or temporarily reside in another state, he must ascertain if that state has a registration agency and whether he is required to register with it; if that is the case, he must then perform whatever acts are required to comply with the other state's registry program. Failure to comply with any of the registration requirements is a Class D felony, punishable by imprisonment for up to five years.[21]

Defendants counter with two arguments: first, that the registration requirements are incidental, regulatory burdens, which cannot satisfy the plus element; and, second, that the registration burdens do not measure up to the type of deprivation of a right that the Second Circuit has previously held to be a plus factor.

Defendants' first line of argument misses the mark. The burdens on registrants are significantly more extensive than

[21] Relying on my ruling in *Doe v. DPS*, No. 3:99CV135, slip op. (D. Conn. Mar. 9, 1999) and on *Doe v. Pataki*, 3 F.Supp. 2d at 468, plaintiff argues that these requirements constitute an alteration of legal status sufficient to satisfy the plus element. The obligations imposed by the CT-SORA as just described are more burdensome than they were when I ruled in *Doe v. DPS* and in their current form are more burdensome than the ones described in *Doe v. Pataki*.

simply providing change of address information, which is how defendants characterize them. Moreover, while courts have found registration requirements to be regulatory and nonpunitive – and therefore not an affirmative disability or restraint for ex post facto purposes – it does not follow that such requirements do not alter a registrant's rights or status under state law.

Defendants' second argument, which suggests that the plus factor can come only from a deprivation of employment closely linked to the stigmatizing conduct, is also unavailing. Courts have held that the alteration of legal status and the burdens accompanying registration under a sex offender law satisfy the plus element. *See Doe v. Pataki*, 3 F.Supp. 2d 456, 468 (S.D.N.Y. 1998); *W.P. v. Poritz*, 931 F.Supp. 1199, 1219 (D.N.J. 1996); *Doe v. Attorney General*, 715 N.E.2d 37, 43 (Mass. 1999) (interpreting the Massachusetts Constitution).[22] Moreover, while *Valmonte v. Bane* and other Second Circuit cases finding stigma-plus arise in the employment context, *Valmonte* recognizes that none of those cases "foreclosed the possibility that the 'plus' element could come from some other independent deprivation." *Valmonte*, 118 F.3d at 1002. *Valmonte* requires that the plus factor come from a "tangible burden" separate from the "deleterious effects which flow directly from a sullied reputation." *Id.* at 1001. *Paul v. Davis*, 424 U.S. 693 (1976), speaks generally of the

[22] *Doe v. Pryor*, 61 F.Supp. 2d 1224 (M.D. Ala. 1999), also found a plus factor in the burdens of a sex offender statute, but those burdens went beyond the CT-SORA's registration requirements to include prohibitions on living or working within 1000 feet of a school or day care center, residing with a minor child not the registrant's biological or adopted child, and changing one's name. *See id.* at 1227.

alteration or deprivation of a legal right or status under state law, *see id.* at 711-12, and identifies (without using the term) the plus factor in *Wisconsin v. Constantineau*, 400 U.S. 433 (1971), as the loss of the right to buy alcohol, which has no direct connection with employment, *see id.* at 708-09.

The burdens imposed by the CT-SORA may entail greater infringement on personal liberty than the type of deprivation at issue in employment cases. In those cases, the government statute, policy, or statement does not mandate any future action by the target of the defamation. Rather, the plus factor is generally satisfied by a one-time event that has already occurred, such as dismissal from an existing job or preclusion from another job. The CT-SORA, on the other hand, requires nondangerous registrants to repeatedly take specific actions to facilitate the government's ongoing defamatory communications. This is no small matter. As the Massachusetts Supreme Judicial Court has noted, registration under a sex offender statute is

> a continuing, intrusive, and humiliating regulation of the person himself. To require registration of persons not in connection with any particular activity asserts a relationship between government and the individual that is in principle quite alien to our traditions, a relationship which when generalized has been the hallmark of totalitarian government.

Doe v. Attorney General, 715 N.E.2d 37 at 43. Because the registration requirements alter the offenders' status under state law, they satisfy the plus element and plaintiff has thus established that the registry's "allegation" that he is

dangerous implicates a liberty interest protected by the Fourteenth Amendment.[23]

C. The Process that is Due

Having determined that dissemination of the undifferentiated registry deprives nondangerous registrants of a constitutionally protected liberty interest, I turn to consider whether the procedural safeguards provided by the State are adequate. Due process requires, at a minimum, notice and an opportunity to be heard. *See Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). Beyond that, the amount of process due is generally determined under the framework of *Mathews v. Eldridge*. In this case, it is not necessary to engage in the *Mathews* balancing because it is undisputed that the CT-SORA provides no procedure to determine a person's dangerousness before he is included in the registry. It suffices to say that under the Connecticut system nondangerous registrants do not have an adequate opportunity to be heard before the deprivation of their liberty interest and thus are denied their Fourteenth Amendment right to due process.

---

[23] Plaintiff contends that the stigmatizing conduct denies a protection of reputation guaranteed by Article I, § 10, of the Connecticut Constitution, will have negative effects on the employment prospects and family relationships of registrants, and will likely result in harassing and abusive attacks on registrants. Because the burdens of the registration requirements constitute a plus factor, there is no need to address these other alleged consequences of the CT-SORA.

II. Ex Post Facto Clause

Plaintiff's claim based on the Ex Post Facto Clause presents the question whether the CT-SORA imposes a penal sanction. The Ex Post Facto Clause forbids application of a new penal sanction to a crime that has already been committed. *See Kansas v. Hendricks*, 521 U.S. 346, 370 (1997); *Doe v. Pataki*, 120 F.3d 1263, 1272 (2d Cir. 1997) (hereinafter "*Doe*"). The Second Circuit has established a two-part test to determine whether a law is penal: first, whether the legislature intended the statute to be criminal or civil; and, second, if the intent was nonpunitive, whether the statute is so punitive in fact that it cannot legitimately be seen as civil in nature. *See Doe*, 120 F.3d at 1274-75. The features of the CT-SORA on which plaintiff primarily relies (namely, widespread dissemination of registration information with no individualized assessment of dangerousness) make this a somewhat closer case than recent cases in which the Second Circuit rejected ex post facto claims. *See Doe; Roe v. Office of Adult Probation*, 125 F.3d 47 (2d Cir. 1997). However, I agree with the defendants that the CT-SORA is regulatory in both intent and effect. Accordingly, their motion for summary judgment on the ex post facto claim is granted.

A. Legislative Intent

Public Acts 98-111 and 99-183 are not Connecticut's first enactment of Megan's Law; they are follow-on statutes to an earlier version. The Second Circuit has stated that the earlier version was enacted in response to concerns "regarding the harm to society caused by sex crimes and the relatively high rate of recidivism among sex

offenders." *Roe*, 125 F.3d at 48. The Connecticut Supreme Court has expressly agreed with the Second Circuit's characterization. *See Connecticut v. Misiorski*, 738 A.2d 595, 601-602 (Conn. 1999). Given the nonpunitive purpose of the prior law, plaintiff can succeed on his ex post facto claim only if he demonstrates that the legislature acted with punitive intent when it amended the prior law or that the new regime it created is punitive in fact.

The legislature's intent, which can be either express or implied, *see Hudson v. United States*, 522 U.S. 93, 99 (1997) (citing *United States v. Ward*, 448 U.S. 242, 248 (1980)), is determined by considering the law's legislative history, its text, (including any preamble), and its structural features. *See Doe*, 120 F.3d at 1276-78. The limited legislative history materials the parties have provided, which are somewhat informative on the issue of intent, do not establish that the legislature abandoned its nonpunitive purpose.[24] Plaintiff makes no claim that the text of the

---

[24] In general, comments of individuals involved in the legislative process do not provide a sure basis for determining legislative purpose. *See Doe*, 120 F.3d at 1277 (noting that "floor debates are of particularly limited assistance in resolving highly controversial issues of legislative intent.") The views expressed by a law's sponsors, however, are entitled to greater weight than those of other commentators. *See id.* Defendants present the Connecticut House Judiciary Committee testimony of Michael Cicchetti, Undersecretary of the Office of Policy and Management ("OPM"), introducing P.A. 99-183, who stated that the purpose of the registry law is to "make it possible for the public to protect itself" and not to impose "additional punishment for [sex] offenders." OPM was one of the many government agencies that participated in a committee established by P.A. 98-111 to monitor the implementation of P.A. 98-111 and to recommend amendments. The bill Cicchetti introduced contained those recommendations, and he can be regarded as speaking on behalf of the bill's sponsors. The floor statements of the sponsors of both bills and their answers to questions, viewed as a

(Continued on following page)

law manifests a punitive intent, and there is nothing in the text that suggests the legislature sought to punish sex offenders rather than protect public safety.[25] That leaves the statute's structural features.

Several features of the law clearly support a nonpunitive public-safety orientation: (1) an offender is not required to register, and thus no information can be made publicly available, until the time of his release, *cf. Doe*, 120 F.3d at 1278 (noting that the offender's assessment is not done until just before release); (2) any public dissemination of registry information must provide a warning that anyone who uses the information to harass a registrant is subject to criminal prosecution; (3) while the class of registrants eligible to petition to be relieved of the registration or notification burdens is narrower than in other systems, the burden on those eligible to petition is to show that they are not a danger to the public; and (4) an offender's registration is suspended when he is in jail or living out of the state and thus does not present a danger to Connecticut residents.

---

whole, also show that the law's purposes are to protect the public and facilitate law enforcement.

Plaintiff cites statements by other legislators, who recognized the detrimental effects on an offender's life that are incidental to registration and notification. Those citations do not establish that those legislators or any others acted for the purpose of bringing about such effects. As in *Doe*, plaintiff here has failed to produce legislative history that provides the "'unmistakable evidence of punitive intent' required to demonstrate punitive motivation." *Doe*, 120 F.3d at 1277 (citing *Flemming v. Nestor*, 363 U.S. 603, 619 (1960)).

[25] Neither P.A. 98-111 nor P.A. 99-183 contains any preamble or statement of purpose to assist in resolving this question of legislative intent.

On the other hand, the CT-SORA differs from the statute in *Doe* and the policy in *Roe* in the following ways: (1) the amount of information about a registrant that is revealed, and the way in which it is revealed, is not linked to any individualized assessment of the registrant's dangerousness; (2) some of the safeguards regarding the release of information that were noted by the *Doe* court are not provided;[26] and (3) a defendant must be made aware of the registration and notification requirements before entering a guilty plea to an enumerated offense, something apparently not required by the statute in *Doe*.

These differences, taken separately or cumulatively and viewed in light of the legislative history and the structural features indicating a regulatory purpose, do not demonstrate that the legislature acted with punitive intent when it adopted Public Acts 98-111 and 99-183.[27]

---

[26] Unlike the New York statute in *Doe*, the CT-SORA does not create a new criminal offense for misuse of registry information and does not require any identifying information from a member of the public prior to giving him or her access to the registry.

[27] It bears noting that the individualized assessments in *Doe* and *Roe* were part of a system that involved significant, potentially mandatory proactive notification of victims, family, neighbors, employers, and at-risk groups.

Also, while a defendant who seeks to plead guilty must be informed of the potential punishment he could receive, it does not follow that every potential consequence brought to the defendant's attention is an element of punishment. *See Cucciniello v. Keller*, 137 F.3d 721, 725 (2d Cir. 1998) (recognizing that some "substantial consequences" of a guilty plea are not part of punishment and thus need not be noticed before the plea is taken, but suggesting that judicial officers might nevertheless find it advisable to give such notice).

B. Punishment in Fact

Next, is must be determined whether the statute, though intended to be regulatory or nonpunitive, is nevertheless so punitive in fact as to violate the ex post facto prohibition. This question is highly context specific. *See Doe*, 120 F.3d at 1275. Moreover, the plaintiff has a heavy burden of showing by "the clearest proof" that the statute is so punitive in form and effect as to render it criminal despite the legislature's intent to the contrary. *See Doe*, 120 F.3d at 1274. "[F]or the effects of a measure to render it 'punishment,' those effects must be extremely onerous. . . . The only examples the case law suggests of effects sufficiently onerous are deprivation of one's United States citizenship that leaves one a 'stateless person' and a complete deprivation of personal freedom (i.e., incarceration)." *E.B. v. Verniero*, 119 F.3d 1077, 1101 (3d Cir. 1997).

To guide inquiry at this stage, the Supreme Court and the Second Circuit have considered the factors identified in *Kennedy v. Mendoza-Martinez*, 372 U.S. 144, 168 (1963), while recognizing that those factors are neither exhaustive nor dispositive. *See Doe*, 120 F.3d at 1275 (citing *Ward*, 448 U.S. at 249)).[28] Both courts have also recognized that the factors often point in different directions. *See Mendoza-Martinez*, 372 U.S. at 168; *Doe*, 120 F.3d at 1275.

[28] The *Mendoza-Martinez* considerations are whether the sanction (1) involves an affirmative disability or restraint, (2) has historically been regarded as a punishment, (3) comes into play only on a finding of scienter, (4) will promote the traditional aims of punishment – retribution and deterrence, (5) applies to behavior that is already a crime, (6) may rationally be connected to an alternative, nonpunitive purpose, and (7) appears excessive in relation to that alternative purpose.

Plaintiff contends that two of the *Mendoza-Martinez* factors show the CT-SORA to be punitive in fact: (1) the statute's registration requirements are triggered solely by the offender's conviction; and (2) Internet availability of registry data is unnecessary to achieve the statute's stated remedial purposes. Neither of these factors by itself, nor the two in combination, establishes by the "clearest evidence" that the law is punitive in fact.

Tie to criminal conduct The fact that the statute's registration requirements are triggered by an offender's conviction does not establish that the law is punitive in fact. *Doe* recognizes that such a trigger is common to all regulatory disabilities that follow from a prior conviction, such as the loss of the right to vote. *Doe* also recognizes that disabilities challenged under the Ex Post Facto Clause and upheld by the Supreme Court in several cases were triggered solely by a prior conviction. *See Doe*, 120 F.3d at 1281 (citing, among other cases, *Hawker v. New York*, 170 U.S. 189, 196-97 (1898) (upholding law under which felony conviction was conclusive evidence of lack of fitness to practice medicine)).[29] *See also Cutshall v. Sundquist*, 193 F.3d 466, 476 (6th Cir. 1999) ("[A]lthough the registration and notification provisions are intertwined with the offender's underlying conviction, they impose no additional penalty. . . . "). Even in plaintiff's main case on this point, *Department of Revenue of Montana v. Kurth Ranch*, 511 U.S. 767 (1994), the tie between

[29] *Hawker* establishes that it is permissible to use a conviction as conclusive evidence that a sanction should apply, contrary to plaintiff's suggestion that the conviction may be used only as evidence in a subsequent proceeding.

the sanction and criminal conduct was only one of the several factors that led the Supreme Court to conclude that the sanction was punitive. *See id.* at 780-83. Elsewhere the Court has found such a link insufficient to establish unconstitutionality. *See United States v. One Assortment of 89 Firearms*, 465 U.S. 354, 365-66 (1984); *Ward*, 448 U.S. at 250.[30]

Excessiveness Plaintiff's argument that Internet dissemination is excessive relative to the goals of public safety and assisting law enforcement has some force. Connecticut's web site makes more information available to more people than is necessary to achieve its public safety and law enforcement goals.[31] Because Connecticut does not conduct an individualized assessment of each registrant, the web site conveys information about people who present either no risk or only a low risk of reoffending. Moreover, because the Internet is a global medium, the web site makes information available to millions of people who will never come to the state or otherwise come into contact with a registrant. As a result, Connecticut's approach is significantly different from the "occasionally

[30] It bears noting that application of the CT-SORA is not conditioned on scienter or a finding of criminal culpability. The CT-SORA applies not only to people who plead guilty to a covered offense or are convicted after trial, but also to people who plea nolo contendere or are found not guilty by reason of mental disease or defect. *See* C.G.S. §§ 54-250(1); 54-251; 54-252; 54-253; *see also Hendricks*, 521 U.S. at 362 (finding significant the fact that people absolved of criminal culpability were still subject to the statute).

[31] Defendants do not dispute that their web site also exceeds the availability requirements of the federal statute, which mandate that information be released only "where it is necessary to protect the public concerning a specific person." 42 U.S.C. § 14071(e)(2).

imprecise targeting" that *Doe* ascribed to the New York statute. *See Doe*, 120 F.3d at 1282.

Nevertheless, I am not convinced that Connecticut's use of the Internet to disseminate registry data makes the CT-SORA punitive in fact. There can be no doubt that Internet availability of registry information is rationally related to the goals of public safety and law enforcement. *See Femedeer v. Haun*, 227 F.3d 1244, 1253 (10th Cir. 2000). Indeed, use of the Internet is the most effective means of making the information available to residents of the state, and it will become more efficient as Internet accessibility increases over time. Because use of the Internet furthers these nonpunitive purposes, this feature of the CT-SORA is insufficient to render the statute punitive in fact. *See United States v. Ursery*, 518 U.S. 267, 290 (1996) ("Most significant is that [the challenged statutes], while perhaps having certain punitive aspects, serve important nonpunitive goals."); *E.B. v. Verniero*, 119 F.3d 1077, 1097 (3d Cir. 1997) ("The relevant issue is whether [the notification provisions] are reasonably related to a legitimate goal.").

Plaintiff contends that Connecticut has an obligation to more closely tailor its notification system to the statute's regulatory purposes, relying principally on *Femedeer v. Haun*, 35 F. Supp. 2d 852 (D. Utah 1999), which addressed a Utah web site providing Internet access to that state's registry.[32] The district court's decision in *Femedeer*

[32] Plaintiff's invocation of "other contexts" in which the Supreme Court has required that a sanction be more closely tailored to an individual's dangerousness is unpersuasive. *See* Pl.'s Mem. at 36. Each of the cases plaintiff cites involved physical detention or confinement.

has been reversed since plaintiff filed his memorandum. *See Femedeer v. Haun*, 227 F.3d 1244 (10th Cir. 2000). Rejecting arguments very similar to those plaintiff makes here, the Tenth Circuit noted that "the district court [had] failed to consider . . . that. . . . the farther removed one is from a sex offender's community and from Utah generally, the less likely one will be to have an interest in accessing" the Utah registry. *Id.* at 1253. The Tenth Circuit also accepted a significant degree of imprecision in Utah's system, declining to require a more rigorous risk assessment mechanism. *See id.* ("[A] statute is not necessarily excessive . . . simply because a state has perhaps not achieved a perfect fit between ends and means.").

Other Factors None of the other *Mendoza-Martinez* factors supports a finding that the CT-SORA is punitive in fact. The burdens of registration and ongoing address verification are not the type of affirmative disability or restraint suggestive of a punitive sanction. *See Cutshall*, 193 F.3d at 474 ("The first [*Mendoza-Martinez*] factor, an affirmative disability or restraint, is some sanction approaching the infamous punishment of imprisonment." (citation and internal quotation omitted)); *cf. Hudson*, 522 U.S. at 104 (rejecting petitioner's affirmative disability argument as nothing approaching the 'infamous punishment' of imprisonment" (internal quotation omitted)). As *Doe* pointed out, the Supreme Court has upheld civil sanctions with burdens must more onerous than those at issue here. *Doe*, 120 F.3d at 1279 (citing, inter alia, *Hendricks v. Kansas*, 521 U.S. 346 (1997) (upholding involuntary civil commitment sanction against an Ex Post Facto Clause challenge); *see also Seling v. Young*, 121 S.Ct. 727 (2001) (rejecting an "as applied" challenge to Washington's civil commitment statute).

Also, contrary to plaintiff's suggestion, "the fact that notification serves to deter sex offenders, both specifically and generally, from committing crimes in the future is not indicative of punitiveness." *Doe*, 120 F.3d at 1283; *see also Hudson*, 522 U.S. at 105 ("To hold that the mere presence of a deterrent purpose renders . . . sanctions 'criminal' for double jeopardy purposes would severely undermine the Government's ability to engage in effective regulation. . . . ").

Aggregate assessment Only two of the *Mendoza-Martinez* factors arguably indicate a punitive effect: the tie to criminal conduct and the excessiveness of the sanction relative to nonpunitive purposes. Neither one by itself is sufficient to overcome the legislature's nonpunitive intent. *See Hudson*, 522 U.S. at 101 (rejecting the Supreme Court's apparent prior elevation of the excessiveness factor to dispositive status); *One Assortment of 89 Firearms*, 465 U.S. at 365-66 (holding that a punitive indication from the tie-to-criminal-conduct factor does not alone establish the necessary "clearest proof"); *Ward*, 448 U.S. at 249-50 (same). Nor does the combined effect of these two factors suffice to establish by the clearest proof that the law is punitive in fact. Accordingly, defendants' motion for summary judgment on the ex post facto claim is granted.

Conclusion

In accordance with the foregoing, plaintiff's motion for summary judgment on the due process claim is granted and his motion as to the ex post facto claim is denied. Defendants' cross-motion for summary judgment as to the stigma aspect of the due process claim is denied and their cross-motion as to the ex post facto claim is granted. The ex post facto claim is dismissed.

So ordered.

Dated at Hartford, Connecticut this 31st day of March 2001.

/s/
Robert N. Chatigny
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

JOHN DOE	:	No. 3:99CV314 (RNC)
Plaintiff	:	
vs.	:	
PUBLIC SAFETY	:	HARTFORD, CONNECTICUT
Defendant	:	MAY 15, 2001

HEARING ON MOTIONS

BEFORE:

HON. ROBERT N. CHATIGNY, U.S.D.J.

APPEARANCES:

FOR THE PLAINTIFF:

ZELDES, NEEDLE & COOPER
1000 Lafayette Boulevard
P.O. Box 1740
Bridgeport, Connecticut 06601-1740
BY: SHELLEY R. SADIN, ESQ.

CONNECTICUT CIVIL LIBERTIES
UNION FOUNDATION
32 Grand Street
Hartford, Connecticut
BY: PHILIP D. TEGLER, ESQ.

FOR THE DEFENDANT:

ATTORNEY GENERAL'S OFFICE
110 Sherman Street
Hartford, Connecticut 06105

BY: RICHARD BLUMENTHAL, AG
MARGARET QUILTER CHAPPLE, AAG
HENRI ALEXANDRE, AAG

Darlene A. Warner, RDR-CRR
Official Court Reporter

[2] 2:00 P.M.

THE COURT: Good afternoon. This is the case of Doe v. Lee. The defendants requested an opportunity to present oral argument on pending motions.

Would you please state your appearances?

MS. SADIN: Yes, sir. Shelley Sadin and Phil Tegeler representing John Doe, plaintiff.

MR. BLUMENTHAL: Richard Blumenthal, Attorney General, with Assistant Attorneys General, Peggy Chapple and Henry Alexander for the State.

THE COURT: Thank you.

The defendant's motion for oral argument is granted.

By way of housekeeping, there is a pending motion on consent, filed by the plaintiff, for permission to file a reply brief in excess of ten pages, which is also granted.

The motions with respect to which argument is desired are the plaintiff's motion for class certification, plaintiff's motion for a preliminary injunction in favor of John Doe, plaintiff's motion for declaratory judgment, Preliminary and permanent injunction in favor of the due process class, and the plaintiff's motion for an order which relates to the ex post facto claim.

I leave it to you to address these in whatever order you wish. Since these are the plaintiff's motions, [3] we'll start with counsel for the plaintiff.

MS. SADIN: Thank you, sir.

As the Court knows, all the parties have fully briefed each one of these motions so I don't want to belabor the points that have already been made in them. I want to be able to answer any questions the Court has and respond to any points that Mr. Blumenthal makes.

I want to be clear though, Your Honor, that the class relief for which we're asking, first of all, would obviate the need for any individual relief for the plaintiff. I also want the Court to understand that we are not asking in the relief of class that the registry be undone or dismantled in any way. We're likewise not asking that there be any restriction on public access to public records; that is to the conviction records of the people who are required to register.

The relief for which we are asking on behalf of the class, Your Honor, is tailor made for the ruling which Your Honor already has entered in favor of the plaintiff, John Doe. And that is that the public disclosure of the undifferentiated registry cease. That addresses the point, Your Honor, that relief for the individual and the relief for the class really are the same. We're not asking for anything different. And I tried to demonstrate that the relief we've requested is limited.

[4] With respect to class certification, I think our papers have demonstrated amply that the Court has sufficient basis on which to make the requisite findings under Rule 23(a)1 through (a)4 and (b)2. And for all the

reasons that we've stated in our briefs, the class should be certified.

With respect to, and I may be jumping around a bit too much. I'm happy to answer any questions as we go along. I think one of the things we're most concerned about today, Your Honor, is the State's request that there be an alternative to the requested injunctive relief. We'd like to emphasize that the suggestion made by the State is insufficient to address the constitutional problem that we brought before the Court and to which Your Honor has found.

The disclaimer on the sex offender registry website simply repeats what we all know, which is that no assessment of dangerousness has been made with respect to any registrant. That being said, it doesn't change the fact that the list – an undifferentiated one on which people who have claims that they are not dangerous nonetheless are forced to register without having the opportunity to show they're not dangerous – cannot be changed. All the disclaimer says is that no dangerous assessment is made, which we all know.

I would urge the Court that the modification [5] order, stay order, which the State alternatively requests would not meet the standards of Rule 262(c), which Your Honor has decided on that there is no irreparable harm to the defendants. I emphasize that it must be irreparable. Unlike the harm which the Court must weigh with respect to the plaintiff, which is substantial, there is no irreparable harm to the defendant. There will be no dismantling of the registry; there will be no effect on the public disclosure of conviction records, which are public records; and there

will be no order rendering the registry itself unavailable to law enforcement.

There will, on the other hand, be substantial harm to the plaintiff and to the plaintiff proposed class, particularly, Your Honor, those people who within the next weeks and months will be required to register either because they are convicted – and that includes in federal court – either because they are convicted of offenses requiring registration or because they've already been convicted and have finished serving sentences and will be released and therefore will have to register.

Those people, Your Honor, have never had their names disclosed on this registry. And with respect to them, if a stay is entered, they will be irreparable, not just substantial but irreparable. Because for the first time they will be placed on that list, a list on which Your Honor [6] has already recognized is constitutionally infirmed.

THE COURT: To be clear, with regard to those individuals, are you asking me to enter an order that would prohibit their inclusion in the list or –

MS. SADIN: No, sir.

THE COURT: – or the public dissemination of a registry containing their information?

MS. SADIN: That's correct. It is the latter.

THE COURT: How would you define "public disclosure" to achieve the objective that you seek?

MS. SADIN: Any and all. That means that the list – the registry would not be available at police departments. It would not be disclosed on the website. It would

not be publicly available anywhere. It would be made available to law enforcement but not to members of the public. And again, Your Honor, what I want to emphasize is that that does not restrict the availability of the list to law enforement, nor does it restrict the availability of public records to the public. Conviction records are public now; they have been public; they will remain public no matter what order this Court enters with respect to the register.

I won't belabor the point about whether or not the defendants are likely to succeed on the merits. I think we've shown there are no additional arguments or anything [7] raised that undermine anything that was in Your Honor's March 31st ruling.

THE COURT: Let me ask you a question to follow up on your comments in response to my last question.

I asked you how you would define "public disclosure" to satisfy your concerns. And you said "any and all public disclosure would be prohibited."

MS. SADIN: Yes, sir.

THE COURT: Suppose a law enforcement officer with access to the registry were to remove a page from the registry in connection with the investigation of an offense and show it to witnesses or potential witnesses, would that be prohibited?

MS. SADIN: I think that would be in connection with his or her law enforcement duties. I would expect that any defense counsel or anybody defending the case would want to be sure that whatever the disclosure that's made, would be consistent with only what is necessary to

prepare the case for court or to perform the officer's public duties.

But I hesitate to say that that would violate the order. I don't think it would. Because that seems to be simply in keeping with law enforcement duties.

But again, I would want to be sure that whoever – I don't want to step on future defense counsel's toes. I [8] would want to be sure that whatever disclosure is made, is something that is supervised by a court and that everybody knows exactly who is obtaining the information.

THE COURT: You haven't challenged the State's right to collect the information?

MS. SADIN: No.

THE COURT: Nor have you challenged the State's right to maintain it in this form.

MS. SADIN: Correct.

THE COURT: You have challenged the public dissemination, the indiscriminate publication of the information to members of the public.

MS. SADIN: Yes, sir.

THE COURT: In my hypothetical, our law enforcement officer has taken a page from the registry that depicts an individual's likeness and provides his name, his address and other identifying data, and he is using it in connection with an investigation.

MS. SADIN: That seems consistent with his duties and that would not be in violation of any injunction that we requested.

THE COURT: All right. I don't want you to think that I'm trying to create needless difficulty here, but I think it's very important that we have a clear understanding.

[9] MS. SADIN: Yes, sir.

THE COURT: Let's suppose that an offense is committed tonight in City-A and the investigating officers go to the registry to determine the names and addresses of people who have been convicted of offenses in City-A and they find that some number of them live not far from the victim in this latest case, would they be able to take pages from the registry containing their photographs and identify information of those individuals and publish them to the victim and potential witnesses in the course of the investigation?

MS. SADIN: The answer is yes, as long as the information is in a form which does not make it evident that those people are included on an undifferentiated registry which includes everyone.

So that, for example, Your Honor, I think they'd be able to examine and to interview witnesses using the information but I wouldn't want it to be evident that it's part of the sex offender registry. But I don't think there would be any limitation on the officer's access to the information or using the information to conduct their investigation.

THE COURT: All right. And you think that language like the language you suggested a few minutes ago would be appropriate for me to use? That is to say, [10] language prohibiting any and all public disclosure of the registry?

MS. SADIN: Maybe "public dissemination" is a better word. I think Your Honor is correct about being very careful about the use of the language.

I would say, though, that any public – any and all public disclosure of the registry in its current form, the answer would be yes. And I don't think that – again, I don't think that would limit police officers in any of the respects that we've discussed just now.

THE COURT: All right. Thank you.

MS. SADIN: Thank you, sir. And one point on Rule 62 is that from the plaintiff's perspective and I think from the public's perspective, the public interest weigh very heavily in favor of this Court exercising its authority and its duty to enforce federal constitutional rights.

THE COURT: All right, thank you.

MR. BLUMENTHAL: Thank you, Your Honor.

First, my thanks to the Court for permitting this opportunity to be heard in response to a request. And as Ms. Sadin has so ably been, I will try to be brief or as brief and to the point as well and not repeat what is already in our papers.

Let me begin with Your Honor's comment somewhat [11] apologetically that the Court didn't mean to create needless difficulty. The difficulties that you have suggested, and may I say respectfully, merely suggested because there would be a raft of very serious difficulties in framing an order relating to disclosure, dissemination, however the Court wishes to characterize what would be prohibited – it would be a very difficult and dangerous

task. And that is really the point that we would like to stress today.

There are a variety of legal and practical difficulties and dangers that are suggested by the kind of order that is being sought here. And we would suggest, with all due respect, that a hearing would be necessary in order to present factual evidence.

Just to suggest some of the factual points that might come before the Court, there are now about 2,075 individuals who are part of the sex offender registry. Of those, approximately 1641 are in compliance with registration requirements. And of those now registered, 337 currently are reincarcerated on other charges. I can't represent to the Court exactly what charges, whether they are reoffenses in connection with sex offense crimes, but may I just suggest to the Court that the high reoffense rate is an aspect of the danger and the difficulty that this Court would confront in framing an order that really, in our view, is a disservice to the public interest but also [12] unnecessary to the goal of having the Court of Appeals review the Court's ruling here as soon as possible; that is a goal that we all share.

THE COURT: What do you do with my considered decision that the plaintiff's complaint, based on the due process clause, is well founded? I have an obligation under my oath of office to see to it that the violation of the plaintiff's rights is stopped and that others who are similarly situated are likewise protected. And whatever difficulties and dangers might arguably arise from that are matters that I had hoped I had given you and plaintiff's counsel full and fair opportunity to address, discuss, and disclose to me.

I can't, consistent with my obligations, ignore the continuing violation of the plaintiff's rights nor the continuing violation of the rights of similarly situated persons.

If the Court of Appeals should determine that I am mistaken, then so be it. But I am bound to discharge my obligations consistent with my oath, and it's not my job to predict what the Court of Appeals might or might not decide months from now. It's my job to deal with the violation that I have found.

Any suggestions from your office as to how best to serve that objective without needlessly burdening any other [13] legitimate interests would be more than welcome.

MR. BLUMENTHAL: Well, we do have a suggestion, which is one that we have alluded to before.

We recognize, to be very blunt, that a Court of Appeals ruling upholding Your Honor's opinion, even if we think it is mistaken, as we do, would apply to the entire list of individuals who are currently part of the sex offender registry and there would have to be some process made available to those individuals, some opportunity to be heard, and some consideration of dangerousness. So whether it is by way of stipulation or agreement or representation, we recognize that we would be bound as to all of those individuals even if John Doe were the single plaintiff before the Court of Appeals and before this Court. And we're willing to stipulate to that fact.

Second, at the moment, John Doe is the only plaintiff and an order as to him would uphold his rights and would fulfill the responsibility raised by Your Honor as to the

process that he is due; and it would avoid the need to undertake class certification, which, again, in our view, with all due respect, is simply a formality as it was in some of the cases that we've cited, using that word, "a formality" because we recognize that Your Honor's reasoning and ruling applies to that class of people even if they aren't certified as a class.

[14] Put aside the difficulties we raise as to numerosity and commonality and typicality and all the criteria that are commonly usually raised as to class certification, we think it is needless, time consuming, burdensome. We haven't raised the issues of notice that would be entailed, the possibility of opt outs and then the difficulty of and danger of framing an order as to the class. And of course we would seek a stay of that order, because we do believe that the public interest would be in danger.

Your Honor raised a hypothetical of a crime already committed that is under investigation. What about a sex offender moving across from a school? One who has been convicted not of one crime but of a number of crimes in City-A. The statute would seem to place an obligation on the local police having been notified of that fact to warn someone. That is the reason for Megan's law in the first place. Nobody was warned. Nobody was made aware of that fact. And it led to that needless tragedy which both federal and state legislatures have sought to prevent from recurring to the extent they can.

THE COURT: That hasn't been the subject of the complaint or this litigation.

MS. SADIN [sic]: Well, it has to – it has, Your Honor, to the extent that the pleading has said that

the [15] class would consist of non-dangerous people whose rights are impaired by the non-differentiation.

THE COURT: But the plaintiff hasn't claimed, to my knowledge anyway, that his due process rights were violated by proactive disclosure of his registry information to school authorities or other people. That's a far cry from his complaint.

What he's saying is, no, that indiscriminate public disclosure and broad public dissemination of his registration information without giving him an opportunity to be heard on the issue of dangerousness violates his due process rights.

My point is, Mr. Attorney General, is I don't know why an order along the lines requested by the plaintiff would inhibit, much less prevent, a law enforcement official from taking proactive measures in the circumstance you describe.

MR. BLUMENTHAL: Well, I am reassured by what Your Honor says except that any and all disclosure, any and all dissemination? If it refers in some way to the sex offender registry. The local police are not even before the Court, and Your Honor's order presumably would pertain to them. They're not represented here. That may seem like a technical issue, but they might have arguments of their own relating to the practical issues of using their [16] registry without disclosing that it's a registry. How are answers to questions going to be framed by local citizens, parents, educators and so forth?

I think that the Court's – and I don't mean to prolong this discussion because it is in the nature of hypotheticals – but the point is that the Court could avoid many of these

difficulties and dangers by simply having the relief pertain to John Doe; giving both sides the opportunity to appeal as quickly as possible; and then having the Court of Appeals opinion, whatever the outcome, form the ultimate –

THE COURT: I grant you that sounds like an easy way to proceed, easy in the sense that it avoids some of the complications that you emphasized. However, it has the singular, and, in my view, unacceptable disadvantage of requiring me to ignore the ongoing violation of the rights of similarly situated persons.

You have said that my ruling applies across the board and that you would honor it if and when the Court of Appeals affirms. But in the meantime you would disregard it, I gather, and thus the rights of others would be violated, in my opinion, and with my acquiescence, until such time as the Court of Appeals renders its decision.

I simply can't agree to do that. And in that context, I would like to have a meaningful, productive [17] exchange about how to avoid unnecessary and unwanted difficulties.

It seems to me that we have that opportunity and we should use it. I would like to frame an order that is no broader than unavoidably necessary to prevent the continuing violation of this plaintiff's rights and the rights of people who are similarly situated. And Ms. Sadin suggests that the plaintiff is looking for an order that prohibits any and all public dissemination of the registry information in its current form, by which I think she means to say "displaying to members of the public the body of information contained within the registry which includes registry information concerning persons who have not been given an opportunity to address the question whether they are currently dangerous."

In other words, and Ms. Sadin, I don't want to discourage you by continuing to talk, you're welcome to pitch in. But just to complete the thought, it's my understanding that the plaintiff does not seek an order preventing a law enforcement officer from copying somebody's registry information and using it in the course of an investigation. Nor, as I understand it, does the plaintiff seek an order that would prevent the kind of proactive notification that you spoke about a minute ago with a person moving across from a school.

[18] What the plaintiff does object to, and I think for very good reason, is giving the public the registry. And in that way conveying to the public the message that any particular person whose registry information may be found within their registry is currently dangerous without giving that person an opportunity to be heard on that subject.

So I don't want to minimize and I certainly don't want to overlook any valid concerns. I think we should take them into account. But it seems to me if that's what the plaintiff is looking for, the things that may concern you most urgent might not be concerns at all.

MS. SADIN: If I may, Your Honor, that is what the plaintiff is looking for with one very small change. The word "dissemination" concerns me a bit because it implies some sort of proactive dissemination as opposed to just disclosure, even disclosure. If a member of the public would come to a station and ask for the registry, that should be covered as well.

THE COURT: Correct. I think I understand your position.

What you are asking me to do is stop the current practice.

MS. SADIN: Yes, sir.

THE COURT: You're not asking me to interfere with investigations; you're not asking me to interfere with [19] the State's ability to engage in proactive notification in the circumstance that the Attorney General describes. What you're asking me for is an order that prevents the State from continuing the current practice.

MS. SADIN: The current practice which Your Honor has found to be unconstitutional.

THE COURT: Correct. That's my understanding.

MS. SADIN: Yes, sir.

THE COURT: So the registry that is currently sitting on the desk in a police department where members of the public can come and peruse it would have to be removed from public access; the website would have to be taken down; but the State could continue to use the registry information for law enforcement purposes and continue to collect the information.

MS. SADIN: All, correct, sir.

THE COURT: Is that helpful?

MR. BLUMENTHAL: To me?

THE COURT: Does it help clarify the situation?

MR. BLUMENTHAL: Well, it clarifies it – I guess the simple answer is no. Yes, theoretically; and, abstractly, no, for the purpose of actually working as a

police officer, whether local or state police out in the field confronted with a dangerous situation, a person who is thought to be dangerous and then what use to make of [20] that information and how to use it.

I simply think, Your Honor, that a ruling of this kind creates grave perils, tremendous uncertainties, profound repercussions for law enforcement resulting from the need to rework a system in a way that is unnecessary to protect the rights at stake here; which are, at the moment, are only the plaintiff's before this Court.

THE COURT: If you accept for purposes of our discussion today that the order would require no more than and no less than what I just said, the registry comes off the counter at the police department and the website comes off the internet but nothing else is prohibited – not the use of the information by the investigator investigating a crime, nor the use of the information by a person in your hypothetical who is concerned about the children at a school – please give me an example or two of the kinds of dangers that you have just referred to.

MR. BLUMENTHAL: Well, let me just –

THE COURT: Assuming nothing else changes, what dangers do you contemplate?

MR. BLUMENTHAL: I would contemplate dangers in the event of public inquiries, in the event of proactive notification. Can a police officer take information that's presented from law enforcement authorities of other states, as frequently happens? Photographs? Can the police [21] officer respond to the inquiry of whether someone is on the registry? Can he say that someone is on the registry? I can think of a lot of hypothetical situations that

would occur to me as I stand here, although I must confess to Your Honor, I wasn't prepared to speak about the full range of hypotheticals, but I'm not out there day-to-day dealing with these issues. And what I would see as one practical danger is that law enforcement would be inhibited by an order that wasn't fully understood even with the best of intentions from this Court.

Now, having said all that, I want to come back to what Your Honor raised initially, which is the offer of a meaningful or constructive conversation, which I hope we're having here, and I would be happy to continue obviously in a more private setting if counsel for the plaintiff wanted to engage in it. We don't mean to sort of just reject all consideration. But I must say also that obviously the legislature has to be involved in this kind of conversation because ultimately it is the legislature's decision as to what kind of process there needs to be if the ruling is upheld by the Court of Appeals, and we would need to consult with the State Police and other law enforcement.

But in direct answer to your question, I can think of a lot of hypotheticals that would raise very grave dangers if I tried to think out the practical difficulties.

[22] THE COURT: Well, I've been trying to think of them. And with the clarification that we have today from plaintiff's counsel, I am more optimistic that an order can be entered that protects the rights of John Doe and others like him without risking the sorts of dangers that one would naturally rightly be concerned about.

I don't think that we risk any particular danger in the hypotheticals that have been described today. And as long as the information is available to be used in investigations

and proactively, I don't know why there should be any such danger.

But I don't claim to be omniscient and I think that your input would be very helpful, and I would like to have some further discussion, perhaps not right now. But, certainly, if there are real valid concerns about public safety that need to be addressed, we should do that, of course.

MR. BLUMENTHAL: Well, I think there are, Your Honor, real valid and pressing public concerns about public safety.

You know, to give more hypotheticals, what if there were dissemination of information in the media about someone who was at large who was thought to have committed a crime whose picture might be available? What would be the implications for the freedom of information act if access [23] were sought to this information by a member of the media? How can this kind of ruling be reconciled with the State's obligations under the federal law? And what availability has to be maintained? Because the clear intent of federal law was that it should be disseminated, in our view.

So I think there are legal and practical difficulties and dangers here that the Court could avoid by simply permitting the parties to go forward with their appeal on John Doe.

And, you know, I apologize for repeating myself. I recognize that the Court is – has given us this opportunity and I thank you.

THE COURT: All right. Thank you.

Anything further?

MS. SADIN: Very briefly, Your Honor. The Wetterling act to which we just referred, states that the state shall, this is 42 U.S.C. Section 14071(e)2, "The state shall release relevant information that is necessary to protect the public concerning a specific registrant." That would not be unfair with the order contemplated by Your Honor.

THE COURT: Mr. Blumenthal, with regard to the motion for class certification, the defendants have opposed class certification and today you have expressed the view that were the Court of Appeals of a mind to affirm, then [24] the defendants would of course extend the benefit of the ruling to all similarly situated people without the need for class certification.

If I had that commitment from you effective now, I suppose class certification might not be necessary. I don't know what the plaintiff's final position would be in that regard. But without that, I don't know how I can avoid the class action aspect of the case without abdicating my responsibility.

If your position is that absent class certification, other similarly situated persons will not get the benefit of the ruling unless and until the Court of Appeals affirms it, then I think I need to grant the motion for class certification. If I'm misunderstanding you, then maybe I don't need to grant the motion for class certification. Do you follow my question?

MR. BLUMENTHAL: I think I follow the question and the answer is as Your Honor has stated our

position, you've stated it correctly; that is, unless and until the Court of Appeals affirms, we would not recognize the ruling as applying to all 2,000 people who are currently part of the registry.

THE COURT: All right, fine. I appreciate that clarification. Then I intend to grant the motion substantially for the reasons stated by the plaintiff in [25] his memorandum of law. And I will have to fashion an order that provides relief.

The plaintiff has asked for declaratory judgment as well as an injunction. I'm going to ask you to confer with each other about the terms of the declaratory judgment and the injunction that should enter given my decision granting the motion for class certification and my ruling on the due process issue.

I give you that opportunity in order to be sure that you have full and fair opportunity to influence the shaping of the judgment.

How much time would you like to have to work on that? I'd like to do something in the next couple of days.

MS. SADIN: Yes, sir, I think we could fashion an order within the next couple of – and discuss the matter with the State, which I take it is the Court's intention.

MR. BLUMENTHAL: Your Honor, I don't mean to leave any mis-impression with the Court, we would do our best to inform or assist the Court, as we feel we have an obligation to do, as any litigant does, in reaching a just and fair result. At the same time, I should inform the Court that we will ask the Court for a stay of that order and we will also seek a stay from the Court of Appeals in

the event it should be denied here. So I don't want to leave any confusion on that point.

[26] We're happy to make available whatever expertise and knowledge we can from State Police and others, but at the same time, we don't mean to suggest we're going to be submitting a joint order on which we agree and are content to accept.

THE COURT: I understand.

To sum up, I've made a ruling granting the plaintiff's motion for judgment on the due process claim, denying its motion on the ex post facto claim. Having come to that decision, it's my obligation to see to it that the violation stops. And I need to extend the benefit of my ruling to similarly situated persons.

The declaratory judgment and the injunction should be no broader than necessary to provide the relief that we have discussed. In other words, getting the registry off the shelf where it's publicly available at the police department and taking down the website, until such time as people are given notice and an opportunity to be heard on the issue of whether they are currently dangerous.

If they are not, then, in my opinion, the communication is defamatory. If they are, then dissemination of the information serves the purposes of the law.

I don't want to over-step the bounds of judicial authority. I don't want to usurp the rights and [27] prerogatives of the political branches of the state government. If I'm right, then I would hope and expect that the State would do as Mr. Blumenthal said. And in the meantime, I would ask only that the State cooperate to the point of telling plaintiff's counsel whether there is something about the

proposed judgment to which the State has some specific objection that could be ameliorated now without waiting any litigating position on the part of the State and for no purpose other than to be sure to avoid unnecessary problems while doing what I must do, which is prevent an ongoing violation of this plaintiff's rights as I see it and a violation of the rights of similarly situated people, which is my job.

All right. So I would like to have something by the end of the day on Thursday.

MS. SADIN: Yes, sir.

THE COURT: All right?

MS. SADIN: Your Honor, if we could make it midday on Friday? I'm actually out of town all day tomorrow.

THE COURT: All right. Then shall we day 1:00 on Friday?

MS. SADIN: Yes, sir.

THE COURT: Is there anything further?

MR. BLUMENTHAL: Not from the State, Your Honor.

[28] MS. SADIN: No, sir.

THE COURT: Thank you.

(Proceedings adjourned at 2:50 p.m.)

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

JOHN DOE, Plaintiff,	:	
V.	:	CASE NO. 3:99CV314 (RNC)
DR. HENRY C. LEE, ET AL. Defendants.	:	

RULING AND ORDER GRANTING
PERMANENT INJUNCTION

For reasons more fully stated in a ruling and order on cross-motions for summary judgment dated March 31, 2001, the Court has determined that public disclosure and dissemination of plaintiff's inclusion in the sex offender registry maintained by the defendants pursuant to the Connecticut sex offender registry act, Connecticut General Statutes §§ 54-250 *et. seq.* (the "Registry" and the "Act") violates plaintiff's rights under the Due Process Clause of the Fourteenth Amendment. Plaintiff has been included in the registry, not because he has been determined to pose a threat to public safety, but solely because he has been convicted on one of the numerous offenses enumerated in the Act. Plaintiff has a liberty interest in not being falsely labeled a dangerous sex offender – a label inherent in his inclusion in the undifferentiated registry. Defendants have deprived him of that interest without providing him notice and an opportunity to be heard on the question whether he is dangerous.

The Court has granted plaintiff's motion to certify a class of all persons who are subject to the registration and public disclosure requirements of the Act without notice and an opportunity to be heard on the question whether

they are dangerous (the "due process class"). Class certification is appropriate under Rule 23(b)(2) of the Federal Rules of Civil Procedure because the requirements of numerosity, commonality, typicality, and adequacy of representation are satisfied and defendants have acted on grounds generally applicable to the class, thereby making appropriate final injunctive relief with respect to the class as a whole.

Accordingly, it is hereby ordered:

Defendants, their officers, agents, servants, employees, and attorneys, and those persons in active concert or participating with them who receive actual notice of this order, are permanently enjoined from:

1) disclosing or disseminating to the public, either in printed or electronic form (a) the Registry or (b) Registry information concerning a member of the due process class if the information identifies the class member as being included in the Registry; and,

2) identifying any member of the due process class as being included in the Registry;

provided that nothing in this order shall

1) impair access to the Registry by law enforcement agencies and officers, including but not limited to the Connecticut Department of Correction, Board of Pardons, Board of Parole, Court Support Services Division, and Division of Criminal Justice;

2) preclude law enforcement agencies and officers carrying out official duties from using information contained in the Registry in specific criminal investigations and prosecutions, so long

as members of the due process class are not described to the public as being included in the Registry;

3) preclude law enforcement agencies and officers carrying out official duties from disclosing or disseminating to the public information necessary to protect the public concerning a specific person, so long as members of the due process class are not described to the public as being included in the Registry; or

4) affect the public's ability to obtain individual criminal conviction history records pursuant to Connecticut General Statutes Sections 1-210 *et seq*. and 29-11 *et seq*.

Defendants are directed to serve a copy of this order on each local police department, law enforcement agency, or other state or local entity to which they have transmitted the Registry or Registry information. Each such department, agency, or entity is bound by this order.

Pursuant to this order, but without limitation of it, defendants shall immediately take down the Registry website and cease making publicly available the Registry information maintained pursuant to C.G.S. § 54-258(a)(1) at the Department of Public Safety and at local police departments and state police troops.

This order is a statement of federal law that supersedes any state law to the contrary, including without limitation the Connecticut Freedom of Information Act.

So ordered.

Dated at Hartford, Connecticut, this 17th day of May 2001.

/s/ _____
Robert N. Chatigny
United States District Judge

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF CONNECTICUT

JOHN DOE	x	No. 3:99CV314 (RNC)
Plaintiff	:	
vs.	:	
PUBLIC SAFETY	:	HARTFORD, CONNECTICUT
Defendant	:	MAY 18, 2001
	x	

TELEPHONE CONFERENCE

BEFORE:

HON. ROBERT N. CHATIGNY, U.S.D.J.

APPEARANCES:

FOR THE PLAINTIFF:

ZELDES, NEEDLE & COOPER
1000 Lafayette Boulevard
P.O. Box 1740
Bridgeport, Connecticut 06601-1740
BY: SHELLEY R. SADIN, ESQ.

FOR THE DEFENDANT:

ATTORNEY GENERAL'S OFFICE
110 Sherman Street
Hartford, Connecticut 06105
BY: MARGARET QUILTER CHAPPLE, ASSISTANT AG
HENRI ALEXANDRE, ASSISTANT AG
MAURA FITZGERALD, ASSISTANT AG
GREG D'AURIA, ASSOCIATE AG
CAROLYN QUERIJERO, DEPUTY AG

Darlene A. Warner, RDR-CRR
Official Court Reporter

[2] 9:00 A.M.

THE COURT: Good morning. Would you please state your appearances for the record starting with plaintiff's counsel?

MS. SADIN: Yes, sir, Shelley Sadin appearing for John Doe. Mr. Tegeler is not available this morning, sir.

THE COURT: Thank you.

MS. CHAPPLE: Barbara Chapple, Assistant Attorney General for the defense. And with me is Associate Attorney General Greg D'Auria, Deputy Attorney General Carolyn Querijero, Henry Alexandre, Assistant Attorney General, and Maura Fitzgerald.

THE COURT: I wanted to speak with you first thing this morning if possible to attend to the matters that need to be addressed in the Doe case. I know that we had spoken about doing something around midday today or perhaps somewhat later than that. However, in light of the correspondence that I received late yesterday from both sides, it seemed to me best, indeed, absolutely necessary, to proceed at the earliest opportunity. Accordingly, I appreciate your being available at this hour.

The plaintiff's submission tells me that the defendants have said they would like additional time to consider the order that has been proposed by the plaintiff and to make additional comments. Is there anything more [3] that the defendants would like to say?

MS. CHAPPLE: Not at this time, Your Honor. I think any comments that we've had we've already included or we've conveyed them to the plaintiffs and they've

been included in the proposed order. We don't intend to submit anything further.

THE COURT: All right, fine.

MS. SADIN: If Your Honor please, one thing had occurred to me that I think we need to attend to, and that is that the defendants have already disclosed and provided copies of the registry to agencies and officers and I think we need to I don't think that this order really covers that.

For example, when Your Honor mentioned the other day that one of the ways that the – that we need to address the disclosure issue is to take the registry off the desks at the police department. I'm not sure that the way we've worded the order so far accomplishes that.

THE COURT: We've addressed that.

MS. SADIN: I think we need to add a clause.

THE COURT: We've done that. And before we've through, I'll read what we have and I'll make this available to you so that you can pick it up.

MS. SADIN: Okay.

THE COURT: All right?

[4] I know the Attorney General's office is just around the corner and it's very easy for the defendants to get access to this order. It may not be quite as easy for you, but it will be available for you as soon as we're off the phone.

MS. CHAPPLE: Your Honor, we'd be happy to pick up a copy and fax it to Shelley.

MS. SADIN: That would be great.

THE COURT: Thank you.

I looked at a transcript of our discussion on the 15th and I note that when I referred to the motion for class certification, I said that I intended to grant it. And to clarify any ambiguity in that regard, I will say for the record now that the motion has been granted.

As I told you in court, I'm persuaded that the plaintiff has satisfied all the requirements for a class treatment. you will be receiving a short statement from me in the nature of a brief memorandum opinion on the class certification issue, but I think the basis for granting the motion is apparent to us all.

With regard to the proposed order, I have a question that I would like you to address. The proposed order talks about disclosing the registry or information. And I think I have a clear idea of what we are trying to do with this order and I'm not sure that the language that you [5] propose is ideal.

MS. SADIN: That wouldn't surprise me.

THE COURT: We plainly do not want the registry, as such, being made available to the public, whether electronically, via the internet, or in book form at the police stations. The registry, as such, may not be publicly disclosed or disseminated.

With regard to the registry information, that is to say information contained in the registry bearing on any particular registrant, it's my understanding that the information may be disclosed provided the registrant is not identified as being in the registry.

MS. SADIN: Correct.

THE COURT: Okay. Then with that clarification, I think I can modify the language and hopefully make it a little bit simpler and cleaner for people.

What I propose to say is as follows: "Defendants are permanently enjoined from disclosing or disseminating to the public, either in printed or electronic form, the registry or registry information concerning a member of the due process class if the registry or registry information contains the name or other identifying information of the class member and identifying any member of the due process class as being included in the registry."

I realize it may be somewhat difficult for you to [6] absorb that and reflect on its adequacy, but the intent is that the registry, as such, could not be publicly disclosed or disseminated and registry information could not be publicly disclosed or disseminated if it contained the name or other identifying information of the class member. Do you have any problem with that?

MS. SADIN: No. From the plaintiff's side, Your Honor, that sounds okay.

MS. CHAPPLE: I guess our concern, Your Honor, is that the order doesn't enjoin the Department of Public Safety from disclosing information in the Bureau of Identification of criminal history information that is available from sources other than the registry. And I think that was the agreement that both sides had. That that information, criminal history information, would still be available as long as it's not identified as being from the registry.

THE COURT: The order goes on. It says, "Provided nothing in this order will impair access to the

registry by law enforcement agencies and officers," and they're specified, "to preclude law enforcement agencies and officers carrying out official duties from using information contained in the registry in specific criminal investigations and prosecutions so long as members of the due process class are not described to the public as being [7] included in the registry."

Three: "Preclude law enforcement agencies and officers carrying out official duties from disclosing or disseminating to the public information necessary to protect the public concerning a specific person so long as members of the due process class are not described to the public as being included in the registry."

Or, four – and this is the point you mentioned. "Affect the public's ability to obtain individual criminal conviction history records pursuant to the applicable statutes."

The order would go on to require that defendants serve a copy of it on each local police department, law enforcement agency or other state or local entity to which it has transmitted registry information. And the order notes that each such department agency or entity is bound.

The order continues. "Pursuant to this order but without limitation of it, defendant shall immediately take down the registry website and cease making publicly available the registry or registry information maintained pursuant to the statute at local police departments and state police troops."

All right?

MS. CHAPPLE: Your Honor, just for the record, I guess I'll state the obvious, which is we don't represent

[8] the municipal police departments. We can't – I mean, we certainly will comply with Your Honor's order, but we can't make any representations as what their reaction will be to the order; whether they feel that the Court has jurisdiction to order them not to disclose this information. But we certainly will comply with the order, make them aware of the order.

THE COURT: Well, if you think that there might be some potential difficulty in that regard, it might be in their interest if somebody were to tell them that if they have notice of this order and they violate it, they might have a contempt problem on their hands and they probably shouldn't risk that without at least checking with counsel beforehand.

MS. CHAPPLE: Hopefully they would do that, Your Honor.

THE COURT: I would hope so.

I know that the defendants moved for a stay in papers that they submitted to us. And I'm not going to stay the order to give the defendants an opportunity to seek a stay from the Court of Appeals. Ordinarily, I would do that in most cases if only to avoid imposing on counsel and the judges of the Court of Appeals unnecessarily.

However, in this situation, I think that I am faced with an extraordinary circumstance permitting no stay.

[9] What am I referring to? The correspondence that I received late yesterday tells me that a local television station has made a Freedom of Information Act request seeking a copy of the registry. I think that were I to grant a stay of my order to permit the defendants to seek a stay from the Court of Appeals, the freedom of information act

request would complicate this situation very much for all concerned. And I think it's better to try to maintain the status quo, so-to-speak.

It's my understanding that the website can be taken down with a key stroke or two. And if the Court of Appeals should decide to stay my order or reverse it, the website can be reinstated with a key stroke or two.

MS. QUERIJERO: Your Honor, Carolyn Querijero, Deputy Attorney General. Can I just speak for a moment to the stay order?

The Attorney General isn't available at this moment, as I think you've been informed. He will be in about 15 minutes.

But we would really ask that you reconsider that and just enter a stay until Monday or make this order effective Monday. Your concerns about the Freedom of Information request, I think I can provide some assurance to you, under the Connecticut law, we have up to four business days to respond to the request. And we could certainly [10] represent to you and assure you that we would not respond to it before Tuesday morning. So if we could have a stay until Monday or have the order take effect on Monday to enable us to get our State papers ready and file them with the Second Circuit, we would – you know, we would ask for that.

THE COURT: All right. I have given careful consideration to this matter. And I don't think a stay is warranted. The defendants have made statements to me and to the public that the decision is plainly wrong and exceedingly dangerous. I think those statements are hyberbole at best. I have thought carefully about the

potential consequences of this order. And I see no danger to the public whatsoever.

If, as the Attorney General has been telling people, the order might imperil school children because a sex offender might move in next door without notice, then I would urge the Attorney General to tell the people involved in law enforcement to be more alert. They are free to continue to check the registry on a daily, indeed hourly, basis. And if they see that somebody has moved in across the street from a school, nothing in the order prevents them from warning everyone in that school. Nothing prevents them from going to that offender and making plain the law enforcement interest and seeing to it that those children are protected.

[11] What the order prevents is public disclosure of that individual's inclusion in the registry and his registry information identified as such.

Consequently, I think you'll see that I give little or no weight to the in terrorem arguments that have been made to me and broadcast widely to the public.

In fact, as a result of all that, your arguments lack credibility with me. And for that reason, too, I deny the request.

Is there anything further?

MS. QUERIJERO: No. Just to note our objection for the record, Your Honor.

MS. CHAPPLE: Your Honor, two brief matters.

One is that I'm not so sure that the website can be taken down as easily as Your Honor has suggested. The

State Police in anticipation of the order has begun preparing. We will notify the Court soon when they expect to be able to have it down, especially if they anticipate any delay. But we've been led to believe that it's not as simple as Your Honor has suggested.

THE COURT: Well, I don't claim to be an expert, but I have advisors who seem to be knowledgeable in the area and they tell me that it can be done quickly and inexpensively. If you have any problems, I would appreciate learning about it and I would urge you to please [12] err on the side of informing me because I am concerned that the order be complied with, all right?

MS. CHAPPLE: Yes, Your Honor.

I was wondering if you could tell us the date when the motion for class certification was granted. If it was the 15th or some time after that.

THE COURT: We can treat it granted as of today on the record in this conference.

MS. CHAPPLE: Thank you, Your Honor.

THE COURT: Anything further?

MS. SADIN: No, sir. Just if the defendant would also keep the plaintiff's apprised of any difficulties with the website. My concern is that everybody's out there trying to – sort of like the Napster case – download it right away.

THE COURT: All right.

MS. SADIN: In anticipation of an order. So the quicker it comes down, I think that's a very important point.

MS. CHAPPLE: We will represent to the Court that we'll advise the Department of Public Safety to make every effort to get it down immediately, as soon as it's possible.

THE COURT: All right. Thank you all.

MS. SADIN: Thank you, sir.

[13] CERTIFICATE

I, Darlene A. Warner, RDR-CRR, Official Court Reporter for the United States District Court for the District of Connecticut, do hereby certify that the foregoing pages are a true and accurate transcription of my shorthand notes taken in the aforementioned matter to the best of my skill and ability.

DARLENE A. WARNER, RDR-CRR
Official Court Reporter
450 Main Street, Room #223
Hartford, Connecticut 06103
(860) 547-0580

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

JOHN DOE, Plaintiff	:	
V.	:	CASE NO. 3:99CV314(RNC)
DR. HENRY C. LEE, ET AL., Defendants.	:	

MEMORANDUM OPINION ON DEFENDANTS' MOTION FOR STAY OF PERMANENT INJUNCTION

In a telephone conference earlier today, the Court granted plaintiff's motion for a permanent injunction on behalf of the due process class, entered the injunction, and denied defendants' motion for a stay of the injunction, stating that this memorandum opinion addressing the denial of the stay would follow.

Defendants have moved pursuant to Rule 62(c) for a stay of permanent injunction pending appeal or, in the alternative, for a more limited stay to permit them time to seek a stay from the Court of Appeals. The merits of the stay have been briefed and were argued on May 15. After careful consideration, I have concluded that the motion for stay pending appeal must be denied and that, in the extraordinary circumstances presented in this case, even the more limited stay should not be granted.

In evaluating a Rule 62(c) motion for stay of an injunction, the Court must consider (1) whether the applicant has made a strong showing that it is likely to succeed on the merits of the appeal; (2) whether the

applicant will be irreparably injured unless a stay is granted; (3) whether a stay will substantially injure other parties interested in the proceedings; and (4) the public interest. *See Rodriguez v. DeBuono*, 175 F.3d 227, 234 (2d Cir. 1999) (citing *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987)).

Defendants have not made a strong showing that they are likely to prevail on appeal. They have presented no new evidence or authority since the due process claim was briefed and decided. The fact that the Second Circuit has not previously considered the due process issue presented here is relevant but by itself plainly insufficient to justify a stay. Of the cases cited by the defendants, only two involve an undifferentiated registry. *See Akella v. Michigan Dep't of State Police*, 67 F. Supp. 2d 716 (E.D. Mich. 1999); *Lanni v. Engler*, 994 F. Supp. 849 (E.D. Mich. 1998). Neither case establishes that the defendants are likely to succeed on appeal.

The defendants have been urged to identify any harms that could arise from entry of the injunction barring them from continuing to make the undifferentiated Registry publicly available while the case is on appeal. At oral argument on May 15, their counsel was unable to identify any harm that is not more than adequately addressed by the careful tailoring of the injunction. *See May 15th Hearing on Motions*, Tr. at 10-23. In the telephone conference this morning, the defendants were given another opportunity to comment but declined to do so.

One example of asserted harm that the State has singled out for special emphasis both in court and in the media hypothesizes a situation in which a dangerous sex offender relocates his residence to a dwelling across the

street from a school for young children. If that were to happen in the real world, reasonably diligent law enforcement officials in that city or town could readily discover the offender's change of residence simply by checking the Registry, which will continue to be updated and remain available to law enforcement officials and agencies at all times. Moreover, if that situation were to occur, nothing in the injunction would prevent law enforcement officials from taking steps to inform everyone at the school and everyone in the neighborhood of the registrant's prior offenses. The injunction would prevent law enforcement officials from providing the Registry itself to the public, identifying the registrant as being included in the Registry information in a manner that revealed his inclusion in the Registry. The defendants have not shown that those limitations would cause anyone harm.

The only other harm defendants have mentioned is an asserted risk that the injunction could cause the State to lose federal funds because of the restrictions imposed by the Wetterling Act. Assuming that the loss of federal grant money that would follow from a state's noncompliance with the Wetterling Act could constitute irreparable harm, the State need have no such concern in this case because the injunction permits it to make the disclosure required by federal law, that is, disclosure of information necessary to protect the public from a specific person. *See* 42 U.S.C. § 14071(e)2). The injunction only requires that, in releasing such information, law enforcement not identify the specific person as being included in the Registry. This limitation in no way dilutes or diminishes the effectiveness of the warning because inclusion in the Registry reflects no assessment of a person's dangerousness and

hence the fact of inclusion adds nothing to the information law enforcement can otherwise provide.

This is not a situation in which denial of the stay will eliminate any meaningful opportunity for the defendants to seek review in the Court of Appeals. *See, e.g., Providence Journal Co. v. FBI*, 595 F.2d 889, 890 (1st Cir. 1979) (injunction ordering FBI to turn over confidential documents to newspaper should be stayed pending appeal; disclosure of documents will utterly destroy the status quo and moot FBI's right of appeal). However, granting the stay would permit the defendants to violate the due process rights of all current and future registrants on an ongoing basis until the appeal was resolved, which necessarily would cause substantial, irreparable harm to them. *See Jolly v. Coughlin*, 76 F.3d 468, 468, 482 (2d Cir. 1996) (a "presumption of irreparable injury . . . flows from a violation of constitutional rights"), *overruled on other grounds* by *City of Boerne v. Flores*, 521 U.S. 507 (1997).

With regard to the public interest, the interests in public safety and effective law enforcement have already been addressed above. As explained there, the injunction does not threaten any harm to those interests. In addition to those interests, the Court must also be concerned about the public interest in not having the State engage in conduct that results in an ongoing violation of federal constitutional rights and, as plaintiff's counsel have correctly pointed out, there is a distinct public interest in having this Court discharge its duty to protect and enforce those rights. The State has unambiguously taken the position that in the absence of class certification it would refuse to extend the benefit of this Court's ruling to anyone except the named plaintiff. *See May 15th Hearing on Motions*, Tr. at 24. Though hardly dispositive of the issues

presented by the State's request for a stay, the State's deliberate refusal to give similarly situated registrants the benefit of the Court's ruling on the due process issue in the absence of an order providing classwide relief cannot be overlooked.

Turning to the defendants' request for a brief stay while they try to obtain a stay from the Court of Appeals, ordinarily such a request would be granted if only to avoid causing undue hardship to counsel and the Court of Appeals. However, extraordinary circumstances presented here make it necessary to deny even such a brief stay. Anticipating today's order granting plaintiff's request for a permanent injunction barring public disclosure of the Registry, a local television station filed yesterday a Freedom of Information Act request for a copy of the Registry database, presumably because the station would like to provide public access to the Registry through its own website. The defendants have informed the Court that an action on the FOIA request is not required until Tuesday, and that they would endeavor to complete and file their stay application in the Court of Appeals by Monday. This gives no assurance that the Registry would not be released to the station on Tuesday. Moreover, the station's request highlights the risk that persons unaffiliated with the defendants have been, are, or would be taking steps to download the information in the Registry. Plaintiff's counsel's reference this morning to the recent Napster controversy is a helpful reminder of the ease with which information provided over the Internet can be copied and disseminated. The Court is also aware that before New York State put any part of its sex offender registry on the Internet, a private group copied the subdirectory of high risk offenders and created its own website. *See*

http://www.parentsformeganslaw.com/html/offender.lasso. It therefore appears that leaving the defendants' website up and running even for only a few more days would needlessly risk enabling third parties to download and print the contents of the database. If such a project were accomplished, the Registry would continue to be publicly available. Dissemination of such a copied registry by private parties would not be reachable under the Fourteenth Amendment, but it would have been made possible only because of the State's prior violation of registrant's due process rights.

In sum, the balance of equities on the request for a stay tips decidedly in favor of denying the stay and the defendants' request for a stay is therefore denied.

It is so ordered this 18th day of May, 2001.

/s/ _____
Robert N. Chatigny
United States District Judge

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

JOHN DOE, Plaintiff	:	
V.	:	CASE NO. 3:99CV314(RNC)
DR. HENRY C. LEE, ET AL., Defendants.	:	

JUDGMENT

This action having come before the Court on cross-motions for summary judgment, and

The Court having considered the motions and the full record of the case including applicable principles of law, and having filed its Ruling and Order on Cross-Motions for Summary Judgment granting plaintiff's motion as to the due process claim, denying plaintiff's motion as to the ex post facto claim, denying defendants' motion as to the due process claim, and granting defendants' motion as to the ex post facto claim, and

The Court having subsequently considered and granted the plaintiff's motion for certification of a class of all persons who are subject to the registration and public disclosure requirements of the Connecticut sex offender registry act, Connecticut General Statutes §§ 54-250 *et seq.*, without notice and an opportunity to be heard on the question whether they are dangerous, and

The Court having also considered and granted the plaintiff's motions for declaratory and permanent injunctive relief in favor of the due process class, and the Court

having entered, by separate order dated today, a permanent injunction against public dissemination and disclosure of the Connecticut sex offender registry, it is hereby

DECLARED that any public disclosure or dissemination of the Connecticut sex offender registry containing the name and identifying information of a member of the due process class, or public disclosure or dissemination of the fact that any such registrant is included in the registry, violates the registrant's Fourteenth Amendment right not to be deprived of a liberty interest without due process of law, and

ORDERED, ADJUDGED and DECREED that judgment be and is hereby entered in favor of the plaintiff on the due process claim and in favor of the defendants on the ex post facto claim.

Dated at Hartford, Connecticut, this 18th day of May, 2001.

KEVIN F. ROWE, Clerk

By: /s/ _____
Linda J. Kunofsky
Deputy Clerk

EOD 5-21-01

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

JOHN DOE,
Petitioner-Appellant
-vs-
DR. HENRY LEE,
Respondent-Appellee

DOCKET NO.: 01-7561
June 5, 2001

TRANSCRIPT OF CIVIL CAUSE FOR MOTION

BEFORE: JOSÉ A. CABRANES,
Circuit Judge
CHESTER J. STRAUB,
Circuit Judge
ROBERT D. SACK,
Circuit Judge

APPEARANCES:

For the Appellant: RICHARD BLUMENTHAL, ESQ.
State of Connecticut Attorney
General's Office
55 Elm Street
Hartford, CT 06141

For the Appellee: SHELLEY SADIN, ESQ.
Zeldes Needle & Cooper
1000 Lafayette Boulevard
Bridgeport, CT 06601

Audio Operator:

Proceedings Recorded by Electronic Sound Recording
Transcript Produced by Transcription Service

KRISTIN M RUSIN
328 Flatbush Avenue, Suite 251
Brooklyn, New York 11238
(718) 789-0620

[2] THE COURT: All right, let's come forward with Doe against Lee.

MR. BLUMENTHAL: Thank you, Your Honor.

THE COURT: Go ahead, Mr. Blumenthal.

MR. BLUMENTHAL: For the record, Your Honor, it's Richard Blumenthal, Attorney General for the State of Connecticut, on behalf of the State of Connecticut. We bring to this court a motion for a stay of the order that Judge Chatigny entered which bars the State of Connecticut from disclosing or making available publicly very critical registry information relating to sex offenders, our law known commonly as our Megan's Law.

The judge below struck down our law and issued an order which he refused to stay and refused also to give us a hearing at which we would have presented, and we proffered to the court evidence showing, the very dramatic and drastic harm, ongoing harm, to the State of Connecticut resulting from this order, harm that is typified by some of what we proffered to the court below that, for example, three hundred and thirty seven of the two thousand seventy five people on that registry have been rearrested for another offense.

The Court is well aware, from its own opinions, for example, in Doe versus Pataki, about the very high recidivism rate that characterizes this group of offenders and poses an ongoing danger to the state's citizens.

[3] This kind of information on the registry made available through the internet, through local police departments, and through the state police is the source of very widespread interest and information to our citizens.

THE COURT: Is the information at the outset public information that's simply gathered this way? If I had enough time and enough gasoline, could I get it myself?

MR. BLUMENTHAL: If Your Honor had enough time and gasoline you could conceivably go to either the state police, where it's maintained centrally – all of it public information, so-called conviction information, regarding the name, –

THE COURT: Could I go from court to court and find it that way?

MR. BLUMENTHAL: You could do it that way, but the state continues to maintain its registry and continues to make the information –

THE COURT: No, I'm more interested in the question as to whether before it gets to the registry it's public information.

MR. BLUMENTHAL: It is all public information, Your Honor. That's right, Judge Sack. It is all public information –

THE COURT: I was going to say, just in passing, that maybe my past is haunting me, but there's an element of prior [4] restraint in all of this. I mean, it's a federal judge telling somebody else – in this case a state or state officers – enjoining them from publishing arguably true information which sort of sounds like a typical prior restraint to me, unless prior restraint – unless you have no First Amendment rights, or prior restraints don't count here, or perhaps it's a perfectly legal prior restraint. But I saw no First Amendment arguments in the papers.

MR. BLUMENTHAL: There aren't any First Amendment arguments in the case because statutorily, Connecticut – our state police and our department of public safety are required to disseminate and disclose this information by law, which the judge struck down. And in fact, all of this information would be available under the Freedom of Information Act, which the judge also enjoined.

THE COURT: But an injunction against the uttering of truthful information ordinarily is suspect under the – highly suspect under the First Amendment, and whether you have to or you don't have to, I would be interested in that dimension of the question of the legality of the order. After all, it's an injunction. It could have been an injunction enjoining you do many things, but what this injunction does is it enjoins you from publishing information.

In fact, I understand the whole reason that the district court refused a temporary stay was because the public [5] was interested and was there and ready to receive and disseminate this information.

MR. BLUMENTHAL: That is absolutely correct, Your Honor. The fact that prompted the order was an inquiry on the part of one of the television stations for the registry, and all of it is indeed truthful information that an individual's name is on the registry. But it also goes beyond simply publishing or uttering or articulating that fact. It is, in fact, denying public access to information that is there.

In other words, the fact that leads anyone in the public to think any of these individuals is dangerous is the fact of that person's having committed and having been

convicted of a sex offense. And that information is absolutely correct. And the public is denied access and availability to that information as a result of the court's order, without –

THE COURT: Well, the public is denied access by the registry, but it is not denied access to the information via other sources.

MR. BLUMENTHAL: That is correct, Judge Straub. Conceivably, if one knew enough to access the information without the registry, one could do so, but certain inquiries simply cannot be responded to if one does not know, for example, the address, or date of birth, or gets wrong by one figure the date of birth, inquiring through that means of the state police.

[6] And this order has created vast uncertainty and anxiety – for example, local police, as this Court might well understand, are completely in a quandary as to what they say when a person is on the registry. Can they disclose that fact? No, they can't.

THE COURT: Well, can you tell us something about the purpose of the registry? Why is the registry – what is the purpose of having this registry?

MR. BLUMENTHAL: The purpose of the registry is to make this information as accessible and available to the public as possible. It is on the internet with a specific disclaimer, as the Court is well aware, that each of these names is there without any risk assessment, any finding of dangerousness, any determination that that person is perilous.

THE COURT: Does Judge Chatigny's order reach that species of dissemination; that is, does it prohibit its placement on the internet?

MR. BLUMENTHAL: It does indeed, Your Honor. It shuts down the internet. The internet has been shut down since this order. We sought a stay from the court, and without any hearing the court denied that stay; in fact, refused to hear any evidence on the harm that would be done to the state.

THE COURT: So the court has basically shut down the registry itself. The registry itself cannot be used for whatever purposes it was meant to serve.

[7] MR. BLUMENTHAL: The registry can be used for limited law enforcement purposes. For example, the list, which is the registry, can be provided to other law enforcement agencies. It can be used for the national database. It can be used by police to proactively warn. But I want to emphasize that there is not a scintilla – not one piece – of evidence of any harm to any specific individual whose name is on that registry, although this case has been pending, was pending for more than a year on cross motions for summary judgment before the court ruled.

It was then another six weeks before the court issued the order and denied us even a temporary stay to come to this Court as we have now done, and we feel that there is, under the standard applicable in this Court, a very substantial question on the merits, and a balance of equities that favors the state. Thank you very much.

THE COURT: Ms. Sadin?

MS. SADIN: May it please the Court, I'm Shelley Sadin, and with me is CCLU legal director Phil

Tegeler, at counsel table, representing the plaintiffs. Your Honors, Mr. Blumenthal is right that you must weigh the relative harms. To see that there is no irreparable harm to the state in having this injunction in place pending on appeal, Your Honors need look no further than the language of the injunction itself. It's attached as Exhibit 1 to our opposition to the memorandum, [8] and it's very carefully tailored to address what the court found was a constitutional violation of the due process class's rights.

Courts have recognized that that kind of ongoing constitutional harm constitutes irreparable harm. Even an allegation of a constitutional violation has been seen as irreparable harm. These state – and again, if you look at the injunction, which was very carefully tailored to address the due process violation that the court found, the injunction does – and I'm sort of paraphrasing, but I'm trying to quote pretty closely the language of the order.

The injunction does nothing to impair access to the registry by law enforcement agencies and officers. It does – so that any law enforcement officer can have access to it.

THE COURT: How about a member of the public?

MS. SADIN: I'm Sorry?

THE COURT: How about a member of the public?

MS. SADIN: A member of the public would not any longer be able to go – however, Your Honor, a member of the public still can contact the court records department and give a name and – you know, give some description and find out whether or not –

THE COURT: Highly impractical, don't you think?

MS. SADIN: I'm sorry?

THE COURT: Highly impractical, what you suggest, [9] don't you think?

MS. SADIN: In fact, with all due respect, Your Honor, it is not impractical, and people do it all the time. If there is someone who moves into their neighborhood about whom they have some concern, you can call and find out whether or not – if someone applies for a job –

THE COURT: Why isn't that just as injurious to John Doe as having it on the registry? I mean, why shouldn't you just shut that down too for the same reason?

MS. SADIN: Because, Your Honor, the fact that a person has his name placed on the registry necessarily implies that the person presents a present danger. It does more than send a message that this person simply is someone who has been convicted.

THE COURT: so this is all about the false – what you allege to be the false implication that name on registry equals danger.

MS. SADIN: Yes, sir, and in fact the stated – Judge Cabranes asked – the stated purpose of the registry is to protect the public. When you think about it, the only reason that a member of the public would need to know whether or not a person is on the sex offender registry in order to protect themselves necessarily implies that that person presents a present danger.

THE COURT: Even though, I gather, that there is a [10] legend that specifically disclaims any dangerousness.

MS. SADIN: Well, what the legend does, Your Honor, is say that no assessment has been made by the state of whether or not a person is dangerous. It doesn't say that none of the people on the list are dangerous. It does not say that there are varying degrees of dangerousness of people who are on the list.

THE COURT: Perhaps the legend should be improved.

MS. SADIN: I think, Your Honor, the problem is that the necessary implication comes from the purpose of the law. The Attorney General has emphasized the purpose of the law is to protect the public. If there are people who are on the list, it necessarily means, to the public, that they are dangerous. Those are people from whom members of the public need to protect themselves. The problem that Judge Chatigny found is that is not true with respect to all of the registrants on the list.

THE COURT: Can the head of a local school board go to the local police authorities and ask for a disclosure of all the individuals in the registry in that school district?

MS. SADIN: What he would –

THE COURT: Or must they ask for particular names?

MS. SADIN: What he would be able to do still, under this order, Your Honor – if a – it works two ways. If the head of a school had a suspicion, or wanted to know,

you know, [11] who lived in the neighborhood, whether or not people living in the neighborhood of the school had sex offender convictions, that person still could go to the same repository – the public records of convictions are – were available before the registry. They remain available under this injunction. Moreover, Your Honor –

THE COURT: And could get all the names in that particular area, is that correct?

MS. SADIN: Yes. yes, indeed. You could get – well, what you could do is – you'd need to know – I suppose you could just – there are ways of finding who lives in the neighborhood, and then you could go and get those people's names.

THE COURT: Well, then what is the difference between approaching it that way and getting it off the internet directory?

MS. SADIN: The difference, Your Honor, is that the internet directory doesn't just include people who present a present danger. It includes everybody who's been convicted of any sex related offense. In fact, Your Honor –

THE COURT: Yes, but I thought I heard you say that the individual in our hypothetical could get the names of all those on the directory in the affected community from the local police authorities.

MS. SADIN: The head of the school would not be able [12] to go – the head of the school would have to be able to give names to the police. The head of the school would have to be able to say look it, I know that these people live in this neighborhood, and I wish to know whether or not any of them has a record.

Mind you, Your Honor, if any of the people in that neighborhood presented a present danger, under this injunction there is no restriction on law enforcement's advising the head of the school that such people –

THE COURT: But you must identify individuals.

MS. SADIN: I'm sorry?

THE COURT: You must identify them by name.

MS. SADIN: If the head of the school –

THE COURT: Yes.

MS. SADIN: – wished to find out whether they had conviction records, that is true.

THE COURT: Suppose the head of the local school board took with herself the list of all the registered voters, all those – in all possible registries and asked the local police authorities to compare that against the registry which is no longer available on the internet. Under the injunction, could the police provide that information?

MS. SADIN: The police are unrestricted in their ability to use the registry for law enforcement purposes.

THE COURT: So that the information could be made [13] available irrespective of the injunction against the internet directory by the head of a local school board who has sufficient imagination in providing the data to the local police.

MS. SADIN: The language – yes, sir. The language –

THE COURT: All right. That being the case, what is the difference? Why not have it available on the internet directory?

MS. SADIN: Because, Your Honor, the message that is sent is that everybody on the directory presents a present danger. That is really the message that the public is getting. The public needs to know where these people are, what they look like, and where they live because they present a present danger.

THE COURT: But in my hypothetical the police are disclosing the information against the list presented by the head of the local school board because of the same inferential concerns.

MS. SADIN: Well, Your Honor –

THE COURT: And therefore, there is a prior restraint in respect of the internet director.

MS. SADIN: The difference, Your Honor, is this: law enforcement is allowed to provide people with whatever information is necessary to protect them and protect the [14] public. If, in Your Honor's hypothetical, the headmaster were to ask about every person who lived in the neighborhood who was on the registry, and if there were people who presented absolutely no public safety risk and with respect to whom the police had no reason to believe that they presented a present danger, those people would be protected from disclosure that they had a sex offender history.

However, Your Honor, if, on the other hand, the public – the headmaster had those people's names, he could still find out whether or not they have a history. There is no restriction on the ability of an individual to go to the court

records department and find out whether or not any given person has sex offender history, so that the headmaster could still get that –

THE COURT: So simply put, you can get the information, you just can't get it on the internet.

MS. SADIN: And you also cannot get it at – the registry itself is no longer available in hard copy form at police departments. The very important thing I Your Honors misunderstand –

THE COURT: Ms. Sadin, hold on one second.

MS. SADIN: Yes, Sir.

THE COURT: And don't worry about the light. We can turn the light off, and I'll give Mr. Blumenthal some time as well.

[15] MS. SADIN: Okay.

THE COURT: But what if the State of Connecticut decided to put online this other system, the whatever-it-is record of convictions, the larger database available to the police departments of Connecticut?

MS. SADIN: Meaning every person's conviction history?

THE COURT: Yes, which is available to the police right?

MS. SADIN: Yes, sir, and to members of the public.

THE COURT: They can punch in a name, right?

MS. SADIN: And to members of the public as well.

THE COURT: Well, exactly. All right., What if they just put – if it's available to the public, what do you think is the difference – presumably, that larger list available to the general public includes these offenders, does it not?

MS. SADIN: It includes these offenders. It includes people who have been convicted of petty theft, of the smallest crimes.

THE COURT: No, I understand. So it includes everything, including these offenders, so it's already available to the general public, either in printed or some electronic form, right?

MS. SADIN: Um hmm. yes, sir.

THE COURT: Is it available on the internet?

[16] MS. SADIN: It is not.

THE COURT: It is not.

MS. SADIN: No.

THE COURT: Well, what if it were? Would you object to that?

MS. SADIN: It would be a different list, Your Honor. I think the implication is that the people who have been gathered together in this list present a danger to families and children.

THE COURT: So this is a special – there's something important, in your view, in the fact that it's this

particular – these particular offenses which are grouped together on a particular registry.

MS. SADIN: Yes, sir, and in fact that was the problem that Judge Chatigny found with respect to the list. The stated purpose is to protect members of the public from present danger. I think if you had a compilation of everybody who had committed every crime in Connecticut, there would not be an implication that all of those people present a present public danger. This list is different. This list implies that everybody on the list is dangerous.

And the state, Your Honor, by making representations as it does in the context of this emergency motion that there is a public necessity that people be notified what these people look like, and where they live, and who they are – that [17] necessarily implies that those people are people from whom the public needs to be protected. That may very well be true of some of the people on the list. It is not true of all the people on the list. And there is no opportunity for anyone who is on this list to context whether or not they pose a present danger that distinguishes –

THE COURT: Nor can they contest against my hypothetical school board head who comes to the local police authorities and says we are concerned about which, if any, sex offenders are residing in our school district, –

MS. SADIN: Yes, sir.

THE COURT: – and we are now giving you, because of the inference that we draw from this concern, and from the data that's available to you – we want you to check the registry against all of these local registries that

we have for other accumulated purposes. I fail to see the difference between that and the internet directory.

MS. SADIN: There is a difference, Your Honor, and the difference is that grouping these people – All of these people together necessarily implies – and putting them on the web site so that people know what they look like, and where they are, and have access to that information – that implies people need to know that information because they are –

THE COURT: But my school –

MS. SADIN: – presently dangerous.

[18] THE COURT: – board head has equivalently grouped those people and asked the local police authorities to set an officer aside to review the list of sex offenders. All the inferences are identical. All the data is identical. All the concerns you raise are identical, except that it must be done inside a building rather than available on the internet.

MS. SADIN: There is a distinction, Your Honor. I'm sorry I haven't made it clear. Judge Chatigny's order precludes law enforcement officers from identifying the information as having come from that compiled list, so that if anybody presents a danger, if anyone has a conviction history which is of concern and should be communicated in order to protect the headmaster and the people in his school, the law enforcement officer can communicate that person's history, can communicate whatever information is necessary to protect the school but would not be allowed to tell the headmaster that the information that he has just – that the officer has just provided has come from – he has that information because it's on a –

THE COURT: Not so.

MS. SADIN: – sex offender registry.

THE COURT: Not so, because I have come to the local police authorities with a list of names, and I have told those authorities why I am concerned. And I have asked those authorities to check the registry. And they come up with [19] names, and they don't tell me where they got them, but we all know where they got them.

MS. SADIN: Once again, Your Honor, there is an important distinction because the order does limit people – does preclude people from being identified, from being branded, as being on the registry. And Your Honors, if there were –

THE COURT: A distinction with no difference whatsoever.

MS. SADIN: I think, Your Honor, there is a distinction. If people are not identified as being on the sex offender registry, that does make a difference. And Your Honors, there is no reason why Connecticut's system cannot be the same as in other states where – for example, in New York, where there are opt-out provisions. There are provisions where every person who is registered on the sex offender registry in New York – there is notice and an opportunity to be heard on whether or not that person is dangerous.

That means that there are – that the list in New York consists of people who belong on the list, and the problem in Connecticut is that we have a –

THE COURT: Why do they belong? There's been no judicial determination, is there? Or is there a judicial

determination in New York that the person is not dangerous?

MS. SADIN: Well, there is an opportunity – yes, there is an opportunity to be heard.

[20] THE COURT: Who makes the decision?

MS. SADIN: I can't remember whether it's a – it is within the context of a court system, though, sir. And in fact, in Connecticut, with respect to some limited number of crimes, there is an opportunity for notice and a chance to be heard on whether or not you're dangerous, but not with respect to all crimes.

THE COURT: Well, you know, dangerousness is something that psychiatrists and judges are loathe to define in particular cases, and I'm – well, let me go back to my hypothetical. Assume for the argument that the state decides to put online, as it were, the registry of all felonies. Include misdemeanors, for that matter, but they do it by category, so they have burglaries, murders, et cetera, so they expand the registry now. Do you have any objection to that? How is that different from what is now available but perhaps not by category? Maybe it is by category.

MS. SADIN: It's less bad, but I think it's still bad. I mean, happily I'm not – we're not facing that in Connecticut. I think it's still – just the fact that you need to communicate where people are, and what they look like, and – I think it implies that there is – these people present a present danger. What about people, Your Honor, who have been convicted of larceny offenses, and they have paid full restitution, and they have done community service, and they've [21] been fully rehabilitated, and they present absolutely no danger to anybody? What is the

purpose of broadcasting to the world where those people live, and what they look like, and what they're up to?

THE COURT: That's a different question. I'm sorry, am I right – what you're saying is that there's – because of what this particular list is, not just names, but because of what this particular list is –

MS. SADIN: Yes, sir.

THE COURT: there's stigma plus the need to register, so you have stigma plus, and what you're suggesting, I think, is the equivalent of a name-clearing hearing, that they ought to have the ability with notice to have a hearing that proves that the implication that they're dangerous is not true.

MS. SADIN: That's precisely right.

THE COURT: And that – now, therefore let's assume you put that – were to, for some reason or other, put that in place and have a two level registry, one that says here are all the names, and here are the list of people who have established that they – they've had name-clearing hearings, and they've established that they're not – appear not to be dangerous, assuming there are human beings who can made decisions like that. I mean, would that be constitutional/

MS. SADIN: I think it would be – it would not [22] present the same problems. I hate to get into it, because I just – there are all kinds of issues presented, Your Honor, by these lists. It's, you know, on whom should the burden fall is, you know, proving dangerousness or non-dangerousness. It's quite complex.

But other states, Your Honors, have been able to resolve this issue. Massachusetts has been working on it. Every state that has a Megan's Law has faced these issues, and there have been various forms of Megan's Law statutes. The problem is Connecticut has one which presently does stigmatize people without giving them notice and an opportunity to be heard. And presently, this order precludes the dissemination of that list without getting in the way of law enforcement, without posing any threat to the public.

THE COURT: Thank you. I'll give Mr. Blumenthal a couple of minutes to respond.

MR. BLUMENTHAL: Thank you, Judge Cabranes. I won't ask for equal time, but I would respectfully ask for just a couple of minutes to clarify some points. Connecticut could have adopted systems in Massachusetts, or New York, or a variety of other states, but it has chosen this system, which is the one that exists in nineteen states around the country, which does not involve a system of classification or differentiation. And it has been upheld by two Courts of Appeals, by two district courts. We cite the decisions in [23] *Russell v. Gregoire* and *Dean* versus *McWherter* in our brief.

We believe that there is, under this Court's standard, a substantial question – a substantial merit on our side, and we believe that the court eventually will uphold it, and we would ask for an expedited appeal. But in the meantime, there are an average of a hundred and fifty thousand Connecticut citizens every month, since 1998 when this list went public in this way, that have sought this information.

Hypothetically there are a wide variety of ways that a school board head, a day care center executive director, a parent could access information, but he or she would need to know date of birth, social security number, a variety of other information, including, for example, address and correct name, which may not be available.

Bottom line, though, Judge Straub, you're absolutely right, the concerns, the inferences – they're all the same, whether this name is on the registry or not, whether the registry is on the internet or not, because the stigma results from the conviction. That's what leads to the perception of dangerousness. If someone has been convicted of a sex offense, that person will be regarded by some element of the public as potentially dangerous.

And the state has gone to great lengths to try to avoid any implication in making this information available that it is trying to reach that enormously difficult issue of [24] whether an individual is dangerous.

And Judge Cabranes, you are absolutely right, this question has bedeviled psychiatrists, lawyers, judges. And the state, in publicizing and making available and accessible this information, is not trying to draw that conclusion. We would simply submit that the balance of equities weighs in favor of avoiding the potential harm to the state that results from this ongoing order, and that the stigma, while it may exist, is purely hypothetical.

There has been absolutely no evidence, no proffer of evidence, that anyone's been denied a job, has been refused a place to live because of the use of this registry.

THE COURT: Would it be useful, in your view, to have that question in due course remanded to the

district court to have an evidentiary hearing on the question of stigma, or on the issues that you claim there is no evidence in the record to support the injunction?

MR. BLUMENTHAL: Well, we have obviously made that an issue, the fact that there has been no hearing. The judge reached his conclusion in ruling on summary judgment saying that one could reasonably conclude that there is this perception of dangerousness. One could reasonably conclude – that's a quote from the opinion – without one piece of evidence on public perception; likewise, reached the conclusion on this – on denying the stay of the order without any [25] evidentiary hearing, so if this case were to be reversed on appeal we would respectfully suggest that remanding it for that kind of evidentiary hearing might well be appropriate.

But in the mean time we respectfully submit, and I appreciate the Court's patience in giving me this extra time, that the appeal be expedited and that this information and the registry continue to be available to Connecticut's citizens so that public safety may be served.

The police may be able to provide this information. They may be able to notify people if they can draw some conclusion that there is an imminent threat. But that places a tremendous burden on local police to draw that conclusion, and one which we think is – they should be spared. Thank you.

(Pause in proceedings)

THE COURT: The motion for a stay is denied by a vote of two to one. Judge Straub dissents. We will expedite the appeal, and we will set down the appeal for either Thursday, July 12, or Friday, July 13. The clerk's

office will be back in touch with you, perhaps later today or tomorrow, to fix the actual date.

And the clerk's office will also establish a schedule which will make it possible to have full briefing for the merits panel for July 12 or 13. It is so ordered. Thank you.

THE COURT: With the presider's permission, may I suggest – I can't even request, but suggest that in the briefs [26] that are filed that some attention be paid to the question of whether there is a First Amendment prior restraint aspect to this? It may be there is a very simple answer to that question, but it's a lot simpler if it's briefed than if we have to figure it out for ourselves.

THE COURT: We may indeed send an order out indicating other questions, but we'll know that in short order. Thank you very much.

* * *

I, KRISTIN M. RUSIN, court approved transcriber, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.

Transcript is certified original only if signed in green ink.

6-11-01

/s/ [Illegible]

JOHN DOE, Individually and on behalf of others similarly situated, Plaintiff-Appellee-Cross-Appellant, SAMUEL POE,

Individually and on behalf of others similarly situated, Plaintiff-Appellee, v. DEPT. OF PUBLIC SAFETY ON BEHALF OF HENRY C. LEE, Comm., OFFICE OF ADULT PROBATION, on behalf of Robert Bosco Director, JOHN ARMSTRONG, Comm.,

Defendants-Appellants-Cross-Appellees,

Docket Nos. 017561 (L); 01-7600 (XAP)

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

271 F.3d 38; 2001 U.S. App. LEXIS 22517

July 12, 2001, Argued
October 19, 2001, Decided

SUBSEQUENT HISTORY: As Amended November 6, 2001. As Amended November 7, 2001. Writ of certiorari granted: Conn. Dep't of Public Safety v. Doe (U.S. May 20, 2002).

PRIOR HISTORY: Appeal and cross-appeal from a judgment of the United States District Court for the District of Connecticut (Robert N. Chatigny, Judge), inter alia, (i) granting summary judgment to the plaintiff on his claim under 42 U.S.C. § 1983 that Connecticut's sexual offender registration law violates the Due Process Clause of the Fourteenth Amendment to the United States Constitution, and (ii) entering declaratory and permanent injunctive relief limiting public disclosure of information contained in the registry. Affirmed. Appeal and cross-appeal from a judgment of the United States District Court for the District of Connecticut (Robert N. Chatigny, Judge), inter

alia, (i) granting summary judgment to the plaintiff on his claim under 42 U.S.C. § 1983 that Connecticut's sexual offender registration law violates the Due Process Clause of the Fourteenth Amendment to the United States Constitution, and (ii) entering declaratory and permanent injunctive relief limiting public disclosure of information contained in the registry. Affirmed. *Doe v. Lee*, 132 F. Supp. 2d 57, 2001 U.S. Dist. LEXIS 5668 (D. Conn.2001) Doe v. Lee, 2001 U.S. Dist. LEXIS 7281 (D. Conn. May 17, 2001)

COUNSEL: SHELLEY R. SADIN, Bridgeport, CT (Zeldes, Needle & Cooper; Philip D. Tegeler, of counsel), for Plaintiffs-Appellees-Cross-Appellant.

RICHARD BLUMENTHAL, Attorney General, State of Connecticut, Hartford, CT (Gregory T. D'Auria, Henri Alexandre, Margaret Q. Chapple, of counsel), for Defendants-Appellants-Cross-Appellees.

JUDGES: Before: CABRANES, POOLER, and SACK, Circuit Judges.

OPINION BY: SACK

OPINION:

SACK, Circuit Judge:

In this appeal, we address the constitutionality of Connecticut's version of "Megan's Law," Conn. Gen. Stat. §§ 54-250-261 (2001), amended by 2001 Conn. Legis. Serv. 01-84 (West), which requires people convicted or found not

guilty by reason of mental disease or defect[1] of designated crimes to register with the State, and mandates disclosure of the information contained in the registry to the public in printed form and through the State's Internet website. The United States District Court for the District of Connecticut (Robert N. Chatigny, Judge), in a thorough opinion, held that the law violates the plaintiff's[2] right to procedural due process guaranteed by the Fourteenth Amendment to the United States Constitution but does not constitute an ex post facto law in violation of Article I, @ 10 thereof. *Doe v. Lee*, 132 F. Supp. 2d 57 (D. Conn. 2001) ("*Doe v. Lee*"). In accordance with this ruling, the court entered declaratory and permanent injunctive relief prohibiting the State from disseminating the registry or disclosing registry information to the public except in limited circumstances. The defendants challenge the issuance of this injunction by appealing the underlying grant of summary judgment to the plaintiff on the due process claim. The plaintiff cross-appeals the court's entry of judgment in favor of the defendants on the ex post facto challenge.

We are keenly aware of the legitimate and pressing importance that the Connecticut legislature attaches to

[1] Because the terms are always used together and carry the same consequences for registrants under the Connecticut sexual offender registry law, *see*, e.g., Conn. Gen. Stat. §§ 54-251(a), 54-252(a), 54-253(a), 54-254(a), 54-255(a), 54-256, throughout this opinion we use the term "conviction" to include a finding that a person is "not guilty by reason of mental disease or defect."

[2] Although the caption lists two pseudonymous plaintiffs bringing suit on their own behalf and the "behalf of others similarly situated," for the sake of relative simplicity, we treat John Doe as the sole plaintiff and appellee; he appears to be the sole cross-appellant.

the State's ability to disseminate information about former sex offenders, principally in order to protect the health and welfare of the State's children. The particular legislative instrument it has chosen to employ, however, is too blunt properly to achieve that end. It fails to accommodate the constitutional rights of persons formerly convicted of a wide range of sexual offenses who are branded as likely to be currently dangerous offenders irrespective of whether or not they are. We therefore affirm.

BACKGROUND

I. The Connecticut Law

Like every other state,[3] Connecticut has enacted a version of "Megan's Law,"[4] which requires people convicted of certain criminal offenses, most of them sexual in nature, to register with the State upon their release into the

[3] *See Roe v. Farwell*, 999 F. Supp. 174, 177 n.1 (D. Mass. 1998); Wayne A. Logan, Liberty Interests in the Preventive State: Procedural Due Process and Sex Offender Community Notification Laws, 89 J. Crim. Law. & Criminology 1167, 1172 (1999).

[4] The original Megan's Law was enacted in New Jersey "to identify potential recidivists and alert the public when necessary for the public safety," *Paul P. v. Farmer*, 227 F.3d 98, 99 (3d Cir. 2000) (citation and internal quotation marks omitted), and was named in memory of seven-year-old New Jersey resident Megan Kanka, who in 1994 was sexually assaulted and murdered by a neighbor twice previously convicted of sex offenses. *See id.; Doe v. Pataki*, 120 F.3d 1263, 1265 n.1 (2d Cir. 1997); *E.B. v. Verniero*, 119 F.3d 1077, 1081 (3d Cir. 1997). As we explained in *Roe v. Office of Adult Probation*, 125 F.3d 47, 48 (2d Cir. 1997), and in *Pataki*, such laws were prompted by "the seriousness of the harm that sex offenders' actions cause to society and the perception, supported by some data, that such offenders have a greater probability of recidivism than other offenders." *Pataki*, 120 F.3d at 1266.

community and provides for disclosure of information gathered through this registry.[5] As amended most recently in 1999, Connecticut's version of the law requires registration of people who have been convicted of crimes that fall within four statutorily defined categories: criminal offenses against a victim who is a minor,[6] nonviolent sexual offenses,[7] sexually violent offenses,[8] and felonies committed for a sexual purpose.[9] *See* Conn. Gen. Stat. §§ 54-250(2), (5), (11), (12), 54-251(a), 54-252(a), 54-254(a).[10]

[5] Federal law renders states that fail to enact such laws ineligible for ten percent of a formula grant that they would otherwise receive under the Edward Byrne Memorial State and Local Law Enforcement Assistance Program, codified at 42 U.S.C. § 3756. *See* 42 U.S.C. § 14071 (g)(2)(A); Final Guidelines for the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, 64 Fed. Reg. 572, 581-82 (Jan. 5, 1999). (Jacob Wetterling was an eleven-year-old St. Joseph, Minnesota, boy who was abducted by a masked man near his home in 1989 and has never been found. *See United States v. Green*, 983 F.2d 100, 100-01 (8th Cir. 1992); The Jacob Wetterling Foundation JWF Online, at http://www.jwf.org/jwf_about.html (last visited Aug. 23, 2001).) Connecticut's registration and notification system is compliant with, but not mandated by, the federal standards. See Final Guidelines, 64 Fed. Reg. at 581-82. The federal law is not challenged in this appeal.

[6] "Criminal offenses against a victim who is a minor" are defined in Conn. Gen. Stat. § 54-250(2) to include kidnapping, unlawful restraint, and a wide variety of sexual acts against persons under the age of eighteen made criminal by various other specified Connecticut statutes.

[7] "Nonviolent sexual offenses" are defined in Conn. Gen. Stat. § 54-250(5) as violations of Conn. Gen. Stat. § 53a-73a, which renders a wide variety of sexual acts Class A misdemeanors.

[8] "Sexually violent offenses" are defined in Conn. Gen. Stat. § 54-250(11) to include certain levels of sexual assault, and also kidnappings that the court finds were "committed with intent to sexually violate or abuse the victim." *Id.*

[9] The sentencing court determines whether a felony was committed for a sexual purpose. Upon such a finding, the sentencing court may

(Continued on following page)

A. Registration

Registration requirements vary depending on the type of crime for which a particular person is convicted and thereby becomes subject to the registration law. A person convicted of a criminal offense against a minor or of a nonviolent sexual offense must register with the Connecticut Department of Public Safety ("DPS") for ten years beginning within three days following his or her release into the community.[11] *See id.* § 54-251(a). In addition, a person convicted of a felony committed for a sexual purpose can also be required to register for ten years at the discretion of the sentencing court. *See id.* § 54-254(a). Finally, a person convicted of a sexually violent offense must register for the remainder of his or her life. *See id.* § 54-252(a).

Each registrant must provide the DPS with his or her name, "identifying factors" including fingerprints, a photograph, a list of other identifying characteristics, and a blood sample for DNA analysis, *see id.* § 54-250(3), criminal history record, and his or her residence address,

require the offender to register as a sexual offender. *See* Conn. Gen. Stat. § 54-254(a).

[10] The law also covers any Connecticut resident who has been convicted in another jurisdiction of a crime "the essential elements of which are substantially the same as any of the crimes" within the statutory categories. *See id.* § 54-253(a).

[11] Groups of offenders within two categories must register for life: (i) anyone who has committed a criminal offense against a minor or a nonviolent sexual offense and has a prior conviction of the same type, and (ii) anyone convicted of the crime of sexual assault in the second degree for engaging in sexual intercourse with a victim who is under thirteen years old and more than two years younger than the perpetrator. *See* Conn. Gen. Stat. § 54-251(a).

see id. §§ 54-251(a), 54-252(a), 54-254(a), which must be verified once a year, *see id.* § 54-257(c). Certain additional obligations apply to all registrants regardless of their underlying conviction. Anyone subject to the law who moves to a new residence must inform the State of his or her new address within five days. *See id.* §§ 54-251(a), 54-252(a), 54-254(a). If a registrant regularly travels into or temporarily resides in another state, he or she must register with the responsible agency there and comply with whatever additional duties that state imposes on sex offenders.[12] *See id.* Each registrant must abide by the statute's address verification requirements by completing and returning to the State within ten days of receipt a nonforwardable verification form. *See id.* § 54-257(c). Finally, anyone subject to the law must submit to having his or her photograph taken at a specified location whenever the State so requests, *see id.* §§ 54-251(a), 54-252(a), 54-254(a), at least once every five years, *see id.* § 54-257(d). Failure to comply with any of these duties constitutes a class D felony, punishable by up to five years in prison. *See id.* §§ 54-251(d), 54-252(d), 54-253(c), 54-254(b).

Disclosure and Public Notification

The statute also obligates DPS to compile the information gathered through the registration process in a central registry and to share that information with local

[12] The law also imposes a reciprocal obligation on anyone who is registered and lives in another state but regularly travels into or temporarily resides in Connecticut. *See* Conn. Gen. Stat. § 54-253(b).

police departments, state police troops, the Federal Bureau of Investigation, and coordinate agencies in other states in which registrants reside. *See id.* § 54-257(a).

The DPS must also make the registry available to the public "during normal business hours." *Id.* § 54-258(a)(1). And the DPS is required to post registry information on the Internet, *see id.* § 54-258(a)(1), something it did until the practice was enjoined by the district court in this litigation. The DPS, also pursuant to statutory prescription, "not less than once per calendar quarter . . . [is required to] issue notices to all print and electronic media in the state regarding the availability and means of accessing the registry." *Id.* Local police departments and state police troops are required to make the registry available for public inspection during office hours. *See id.* The following warning must be posted wherever the registry is open to public view: "Any person who uses information in this registry to injure, harass or commit a criminal act against any person included in the registry or any other person is subject to criminal prosecution." *Id.* § 54-258a.

The primary means of disseminating registrant information to the public was the "Sex Offender Registry" Internet database maintained by the DPS,[13] which, until it was shut down pursuant to the injunction issued by the district court, could be reached through the websites of

[13] The statute does not itself give a name to the registry. The State refers to it, and referred to it on the Internet site, as the "Sex Offender Registry," although it includes persons convicted of several crimes "against a victim who is a minor" that are not necessarily sexual in nature. *See* Conn. Gen. Stat. § 54-251(a).

several television stations, as well as through the official homepage of the State of Connecticut, http://www.state.ct.us.[14] Anyone with access to the Internet was able to search the database by zip code or town name, which produced a list of all registrants within the scope of the search, or by last name or first letter thereof. Every name that was produced through such a search yielded a direct link to another page entitled "Registered Sex Offender" containing the registrant's name, address, photograph, and physical description.

Sometime between December 1998 and May 1999, the following statement was added to the first page of the Sex Offender Registry website:

> This information is made available for the purpose of complying with Connecticut General Statutes §§ 54-250, et seq.. . . . The registry is based on the legislature's decision to facilitate access to publicly-available information about persons convicted of sexual offenses. The Department of Public Safety has not considered or assessed the specific risk of reoffense with regard to any individual prior to his or her inclusion within this registry, and has made no determination that any individual included in the registry is currently dangerous. Individuals included within the registry are included solely by virtue of their conviction record and state law. The main purpose of providing this data on the Internet is to make the information more easily available and accessible, not to warn about any specific individual. Anyone who uses this information to injure, harass, or commit a criminal act against any person included in the registry or any other person is subject to criminal prosecution.

[14] The website, which was first made available on January 1, 1999, was shut down on May 18, 2001 pursuant to the permanent injunction issued by the district court. During its first five months of operation, the website was visited more than three million times.

We are somewhat handicapped by our inability to view the website in its actual form or context because the site is no longer publicly available and neither party has supplied us with an alternative method for obtaining access to it.

For part or all of the time it was accessible, the website contained the message: "This information is made available for the purpose of protecting the public."

C. Exclusions and Restrictions

Certain people who would otherwise fall within the scope of the law are eligible for relief from these provisions. Two narrow categories of offenders need not register at all if a court so orders upon a finding that "registration is not required for public safety": anyone who was convicted of engaging, while under nineteen years of age, in sexual intercourse with a victim who was between thirteen and sixteen years old but at least two years younger than the perpetrator; and anyone who was convicted of subjecting another person to sexual contact without the victim's consent. *See* Conn. Gen. Stat. § 54-251(b), (c).

A court has discretion to order the DPS to restrict public dissemination of information about two other classes of registrants – those who were convicted either of sexual assault in a spousal or cohabiting relationship or of any crime involving a victim under the age of 18 to whom the offender is related – if the court finds that publication is not required for public safety and would reveal the

identity of the victim. *See id.* § 54-255 (a), (b). A registrant who has committed one of several specified offenses between October 1, 1988 and June 30, 1999 may petition the court for an order limiting the dissemination of his or her registration information to law enforcement purposes, provided that the court finds that such a limitation would not threaten public safety. *See id.* § 54-255(c). This right of petition is also afforded to a person who had been convicted between October 1, 1988 and September 30, 1998 of a crime within the purview of the sex offender law provided that he or she did not serve jail time for the original conviction, has not subsequently been convicted of another crime covered by the law, and has registered with the DPS. *See id.*

Apart from whatever determinations are made in the course of these proceedings, neither the DPS nor any other agency responsible for administering the registration law affords a person subject to the law an opportunity to be heard on the issue of whether he or she is dangerous or a threat to public safety before requiring that person to register and disclosing the information about him or her to the public.

II. Parties

According to the plaintiff's Fourth Amended Complaint, the plaintiff is a Connecticut resident who has been convicted, based on conduct preceding the law's effective date, of an offense that subjects him to the registration and notification requirements of the Connecticut registration law. He alleges that he "is not a dangerous sexual offender and does not pose a threat . . . to the community." Doe also represents a class certified by the district court

on May 18, 2001 that is defined as "all persons who are subject to the registration and public disclosure requirements of Connecticut's sex offender registry act, Connecticut General Statutes §§ 54-250 et seq., without notice and an opportunity to be heard on the question whether they are dangerous."

The defendants are Connecticut agencies and directors or commissioners of those agencies with responsibilities for the administration of the registration act, all of whom are sued in their official capacities.

III. Procedural History

On February 22, 1999, the plaintiff filed suit under 42 U.S.C. § 1983 alleging that Connecticut's sex offender law violates his Fourteenth Amendment right to procedural due process because it deprives him of a liberty interest – his reputation combined with the alteration of his status under state law – without notice or a meaningful opportunity to be heard. He also claims that the law subjects him to punishment for conduct that preceded the date on which the law took effect in violation of the Constitution's Ex Post Facto Clause. *See* U.S. Const. art. I, § 10. The plaintiff also sought to represent two classes, one based on the due process challenge and the other on the ex post facto claim. On behalf of himself and both classes, Doe sought declaratory and injunctive relief prohibiting the State from enforcing the law's registration requirements or publicly disclosing any information contained in the registry.

The plaintiff moved for summary judgment on July 9, 1999. The defendants cross-moved for summary judgment two months later. The district court ruled on these motions

on March 31, 2001, granting summary judgment to the plaintiff on the due process claim and to the defendants on the ex post facto challenge.[15] *See Doe v. Lee*, 132 F. Supp. 2d at 57.

With respect to the due process issue, the court held that the plaintiff had satisfied the "stigma plus" test derived from the Supreme Court's decision in *Paul v. Davis*, 424 U.S. 693, 47 L. Ed. 2d 405, 96 S. Ct. 1155 (1976), and had therefore stated a liberty interest protected by the Due Process Clause. *See Doe v. Lee*, 132 F. Supp. 2d at 63-66. The court reasoned that the plaintiff had met the "stigma" portion of this test because "the registry suggests that plaintiff is currently dangerous," *id.* at 63, while he asserts that he is not. The court deemed the "plus" component satisfied by the fact that the registration duties imposed upon the plaintiff altered his status under state law. *See id.* at 64-66. Having thus found that the law deprived the plaintiff of a protected liberty interest, the district court held that the State had not satisfied the mandate of the Due Process Clause because it failed to afford the plaintiff any notice or opportunity to be heard on the issue of his current dangerousness before disclosing his registry information to the public. *See id.* at 66. On the ex post facto claim, the court held that the plaintiff had failed as a matter of law to demonstrate that the registration law was punitive either in purpose or in effect and therefore granted judgment to the defendants. *See id.* at 66-71.

[15] On the same day, the court granted the plaintiff's motion to amend his complaint to add an allegation that he is not dangerous, which the court deemed necessary to resolve the due process issue.

On April 18, 2001, the plaintiff filed motions for certification of the due process claim class, for a declaratory judgment, and either for preliminary and permanent injunctive relief on behalf of the class or, in the alternative, for a preliminary injunction in favor of himself. The court issued a permanent injunction on May 17, 2001, prohibiting the defendants from "disclosing or disseminating to the public, either in printed or electronic form (a) the Registry or (b) Registry information concerning a member of the due process class if the information identifies the class member as being included in the Registry" and from "identifying any member of the due process class as being included in the Registry." *Doe v. Lee*, 2001 U.S. Dist. LEXIS 7281, No. 3:99CV314 (D. Conn. May 17, 2001) (order granting permanent injunction). The injunction is limited to public disclosure of the sexual offender registry; it does not prevent law enforcement agencies or officers from obtaining access to the registry or using information it contains for purposes of protecting the public or investigating specific crimes. On May 18, the district court granted the motion for class certification and entered a declaratory judgment in favor of the due process class.

The defendants immediately moved in the district court for a stay of the injunction, which the court denied on May 18, 2001. A divided panel of this Court denied a similar motion after oral argument on June 5, 2001, but expedited the parties' appeal and cross-appeal of the district court's final judgment, which had also been entered on May 18, 2001.

DISCUSSION

I. Standard of Review

We review a district court's grant of summary judgment de novo, construing the evidence in the light most favorable to the non-moving party. *See Tenenbaum v. Williams*, 193 F.3d 581, 593 (2d Cir. 1999), cert. denied, 529 U.S. 1098 (2000). Summary judgment is appropriate where "there is no genuine issue as to any material fact and . . . the moving party is entitled to a judgment as a matter of law," Fed. R. Civ. P. 56(c), i.e., "where the record taken as a whole could not lead a rational trier of fact to find for the non-moving party." *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587, 89 L. Ed. 2d 538, 106 S. Ct. 1348 (1986). A fact is "material" for these purposes if it "might affect the outcome of the suit under the governing law. . . . " *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 91 L. Ed. 2d 202, 106 S. Ct. 2505 (1986). An issue of fact is "genuine" if "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Id.*

II. Procedural Due Process Claim

We first address the defendants' appeal from the district court's judgment with respect to the due process claim.

The parties agree, as do we, with the district court's conclusion that the "stigma plus" test, first set forth in *Paul*, governs the defendants' appeal. In *Paul*, the Supreme Court held that in order to state a claim under 42 U.S.C. § 1983 for a violation of the Due Process Clause, a plaintiff who complains of governmental defamation must show (1) the utterance of a statement about him or her

that is sufficiently derogatory to injure his or her reputation, that is capable of being proved false, and that he or she claims is false, and (2) some tangible and material state-imposed burden or alteration of his or her status or of a right in addition to the stigmatizing statement. *See Paul*, 424 U.S. at 701-02, 710-11. This requirement is known in this Circuit and elsewhere as the "stigma plus" test. *See, e.g., Cannon v. City of West Palm Beach*, 250 F.3d 1299, 1302 (11th Cir. 2001); *Cutshall v. Sundquist*, 193 F.3d 466, 479 (6th Cir. 1999); *WMX Techs., Inc. v. Miller*, 197 F.3d 367, 376 (9th Cir. 1999); *Greenwood v. New York*, 163 F.3d 119, 124 (2d Cir. 1998).

A. The "Stigma"

A "stigma" is "[a] mark or token of infamy, disgrace, or reproach. . . . " The American Heritage Dictionary of the English Language 1702 (4th ed. 2000).Publication of the Connecticut Sex Offender Registry plainly "stigmatizes" the people listed on it insofar as it asserts that they are persons convicted of crimes characterized by the State as sexual offenses. But those assertions are concededly true. The gravamen of "stigma" as part of a due process violation is the making under color of law of a reputation-tarnishing statement[16] that is false. *See Codd v. Velger*, 429 U.S. 624, 627, 51 L. Ed. 2d 92, 97 S. Ct. 882 (1977) (per curiam) (holding that plaintiff was not entitled to a hearing with respect to derogatory statements about him because

[16] Defamation and stigma are virtually synonymous. The "stigma plus" test is sometimes referred to in the case law as a "defamation plus" test. *See, e.g., Cannon*, 250 F.3d at 1302; *Herb Hallman Chevrolet, Inc. v. Nash-Holmes*, 169 F.3d 636, 645 n.3 (9th Cir. 1999); *Greenwood*, 163 F.3d at 123.

"nowhere in his pleadings or elsewhere has [he] affirmatively asserted that the [statements in issue were] substantially false"); *Quinn v. Syracuse Model Neighborhood Corp.*, 613 F.2d 438, 446 (2d Cir. 1980) ("To constitute deprivation of a liberty interest, the stigmatizing information must be both false . . . and made public . . . by the offending governmental entity.") (alterations in original; citation and internal quotation marks omitted). The plaintiff therefore asserts not merely stigma, but false stigma: that the Connecticut law "violates [his] due process rights by stigmatizing [him] as [a] presently dangerous sex offender[ ]," which he maintains is false and gives him a right to a hearing comporting with due process requirements to provide him with an opportunity to prove that he is not in fact a present threat to public safety. Appellee's Br. at 7 (emphasis added); *see also Doe v. Lee*, 132 F. Supp. 2d at 63 ("Plaintiff contends that he is stigmatized because his inclusion in the registry conveys the false message that he is a dangerous sex offender and a threat to public safety.")

To meet the stigma element of his claim, then, the plaintiff is required to show a stigmatizing statement about him made or to be made undercolor of law that is capable of being proved true or false. He has only to allege, not prove, that the statement is false in order to establish a due process right to the hearing he seeks. *See Brandt v. Bd. of Coop. Educ. Servs.*, 820 F.2d 41, 43 (2d Cir. 1987). It is at such a hearing that the plaintiff would have the opportunity to have his name cleared and the false stigma thus avoided.

The district court concluded that the plaintiff met the stigma element of his claim. The court's opinion is not entirely clear, however, as to how public dissemination of the registry falsely stigmatizes the plaintiff. We read the

court's decision as containing two possible explanations: that the registry implies that every person listed therein is in fact dangerous; and that it implies that some of the registrants are dangerous and that each individual registrant is more likely than the average person to be currently dangerous.

As to the first of these possibilities, the court, echoing the plaintiff's argument, stated:

> The stigma question . . . [is] whether, assuming plaintiff is not dangerous, public dissemination of the sex offender registry conveys the erroneous message that he is. The answer to this question must be yes. Despite the accuracy of the registry data concerning the plaintiff and the statement on the web site that no determination of any individual's dangerousness has been made, the registry suggests that plaintiff is currently dangerous.

Doe v. Lee, 132 F. Supp. 2d at 63. The defendants respond that "the inference of dangerousness the district court drew, and that it assumes the public will draw, from the accurate and public information [contained in the registry] is not supported by any facts in the record." Appellants' Br. at 25. They argue that, to the contrary, by including in the website version of the sexual offender registry the statement that the DPS has made no determination that the persons included are "currently dangerous," the State has specifically negated this inference. *Id.* at 25-26.

We share some of the State's doubt as to whether, as a matter of law, public dissemination of the registry implies to any particular reader, its average reader, or to "an appreciable fraction" of its readership, *Peck v. Tribune Co.*, 214 U.S. 185, 190, 53 L. Ed. 960, 29 S. Ct. 554 (1909) (Holmes, J.) (defamation action), that every listed person,

including the plaintiff, is currently dangerous. The registry purports to be a list of virtually all offenders convicted of covered crimes, not only presently dangerous sex offenders. The website disclaimer enforces that notion, at least to those visitors to the website who actually read it, by implying that the site includes both dangerous and non-dangerous offenders. While the registry thus necessarily communicates the idea that registrants committed covered offenses and thereby implies that they may pose a current danger, we cannot conclude on the record before us that visitors to the website necessarily understood it to say or imply that all of the registrants are in fact currently dangerous. Our inability to reach that conclusion is exacerbated by the fact that the website has been shut down and we have no means to examine the registry in the form and context in which actual readers would have viewed it.

But the district court also said:

> The stated purposes of the [law] are to protect the public and facilitate law enforcement. Registration and dissemination serve these goals only because some registrants are likely to reoffend. Thus, the message that some registrants are currently dangerous is, and is intended to be, communicated to viewers of the registry. *Doe v. Lee*, 132 F. Supp. 2d at 64 (emphasis added)

(footnote omitted). With this we agree. The sexual offender registry conveys the message that some of the persons listed on the registry are currently dangerous; disclosing the identity of persons who are currently a threat to public safety is the sole avowed and legitimate purpose of the registry. Even the disclaimer itself, by asserting that the DPS "has made no determination that any individual included in the Registry is currently dangerous," clearly implies that some may be. But the list is undifferentiated;

it does not say which registrants are or may be currently dangerous and which are not.

We think that it follows that publication of the registry implies that each person listed is more likely than the average person to be currently dangerous. That implication seems to us necessarily to flow from the State's choice of these particular individuals about whom to disseminate information, a record as to their sex offences, and information as to their current whereabouts. This implication stigmatizes every person listed on the registry. And the plaintiff claims that, as to him, it is false.

If the "plus" factors are present – a question to which we will turn shortly – then the plaintiff is entitled to due process in the form of a hearing at which he would have the opportunity to establish that he is not particularly likely to be dangerous and therefore should not be listed in a publicly disseminated registry in a way that falsely implies otherwise.

The State of Connecticut contends that by enjoining the publication of the information on the registry, the district court was doing no more than enjoining the dissemination of truthful information about the criminal history of the registrants. That would be troubling if it were so.[17] We would be deeply concerned about a federal

---

[17] The injunction by a court of statements like those contained in the sexual offender registry made by a private individual, a classic prior restraint, would be highly suspect particularly insofar as the statements at issue were true. "Prior restraints on speech and publication are the most serious and the least tolerable infringement on First Amendment rights." *Nebraska Press Ass'n v. Stuart*, 427 U.S. 539, 559, 49 L. Ed. 2d 683, 96 S. Ct. 2791 (1976). They carry "a heavy presumption against [their] constitutional validity." *Bantam Books, Inc. v.*

(Continued on following page)

court's order the purpose of which was to require the State of Connecticut to keep truths from its citizens. *Cf. Virginia State Bd. of Pharmacy v. Virginia Citizens Consumer Council, Inc.*, 425 U.S. 748, 770, 48 L. Ed. 2d 346, 96 S. Ct. 1817 (1976) (deprecating as "highly paternalistic" a state law that, in violation of the First Amendment, sought to protect consumers by prohibiting truthful advertising). We conclude, however, that the district court's order does not target truthful speech. Publication of the registry in its present form implies that persons listed on the registry are particularly likely to be currently dangerous. Unless everyone on the registry is particularly likely to be dangerous, a proposition that the State neither asserts nor embraces, that implication is not true.

The listings alone, true or false – the "stigmatizing" by the State – are not, under Paul, actionable as due process violations. But if "plus" factors are present, the plaintiff is entitled to due process to establish whether the implication of likely dangerousness, as applied to him, is false and to prevent its communication to the public until he has had that opportunity and has failed.

Sullivan, 372 U.S. 58, 70, 9 L. Ed. 2d 584, 83 S. Ct. 631 (1963). But the parties have not addressed whether a similar analysis is to be engaged in where, as here, a federal court enjoins a state government or official from making statements some of which may be truthful. *Cf. Reno v. Condon*, 528 U.S. 141, 145 L. Ed. 2d 587, 120 S. Ct. 666 (2000) (holding that federal statute that prohibited states from disseminating accurate motor vehicle information was not unconstitutional under the Commerce Clause or principles of federalism, without discussing First Amendment implications, if any).

B. The "Plus" Factors

Having isolated the "stigma" that the Connecticut sexual offender registry law visits on registrants, then, we must inquire whether there is a "plus" factor that gives rise to a liberty interest under the Due Process Clause.

1. Immunity and employment termination precedents. Although we have applied the "stigma plus" test many times, *see, e.g., Greenwood*, 163 F.3d at 123-24; *Donato v. Plainview-Old Bethpage Cent. Sch. Dist.*, 96 F.3d 623, 630-33 (2d Cir. 1996), *cert. denied*, 519 U.S. 1150, 137 L. Ed. 2d 218, 117 S. Ct. 1083 (1997); *Valmonte v. Bane*, 18 F.3d 992, 998-1002 (2d Cir. 1994); *Martz v. Inc. Vill. of Valley Stream*, 22 F.3d 26, 31-32 (2d Cir. 1994); *White Plains Towing Corp. v. Patterson*, 991 F.2d 1049, 1062-63 (2d Cir.), *cert. denied*, 510 U.S. 865, 126 L. Ed. 2d 144, 114 S. Ct. 185 (1993); *Easton v. Sundram*, 947 F.2d 1011, 1016-17 (2d Cir. 1991), *cert. denied*, 504 U.S. 911, 118 L. Ed. 2d 548, 112 S.Ct. 1943 (1992); *Neu v. Corcoran*, 869 F.2d 662, 665-70 (2d. Cir.), *cert. denied*, 493 U.S. 816, 107 L. Ed. 2d 33, 110 S. Ct. 66 (1989), the import of the "plus" component remains somewhat unclear. *See Neu*, 869 F.2d at 667 (noting that the meaning of *Paul* is "not unambiguous" and that "it is not entirely clear what the 'plus' is"). As we noted in *Valmonte*, 18 F.3d at 1000, this uncertainty arises in part because many of our cases involving "plus" factors were resolved on the basis of a qualified immunity defense. We often elided the issue of whether the defendant had deprived the plaintiff of a liberty interest, concluding that the defendant was in any event entitled to prevail on grounds of qualified immunity because any such interest was not clearly established at the time of the alleged violation. *See, e.g., White Plains Towing Corp.*, 991 F.2d at

1063-64; *Easton*, 947 F.2d at 1015-16; *Neu*, 869 F.2d at 665, 667.[18]

In addition, our cases have typically addressed "stigma plus" claims in the context of termination of government employment. *See, e.g., Greenwood*, 163 F.3d at 123-24; *Donato*, 96 F.3d at 630-33; *Martz*, 22 F.3d at 32; *Brandt*, 820 F.2d at 45; *Baden v. Koch*, 799 F.2d 825, 831 (2d Cir. 1986); *Quinn*, 613 F.2d at 445-47; *Gentile v. Wallen*, 562 F.2d 193, 197-98 (2d Cir. 1977); *Huntley v. Cmty. Sch. Bd.*, 543 F.2d 979, 985-86 (2d Cir. 1976), *cert. denied*, 430 U.S. 929 (1977). These cases yield principles that are sometimes difficult to apply in delineating "plus" factors in other contexts. This appears to result at least in part from the fact that the government-employment line of cases harks back to the Court's pre-*Paul* decision in *Board of Regents v. Roth*, 408 U.S. 564, 33 L. Ed. 2d 548, 92 S. Ct. 2701 (1972). There, the Court observed that although a teacher's termination from public employment does not implicate a liberty interest, it might if the state were to impose "on [the plaintiff] a stigma or other disability that forecloses his freedom to take advantage of other employment opportunities." *Id.* at 573. In termination cases, courts have found based on *Roth* that it is the termination that is the "plus" factor establishing a due process violation and the right to a "name-clearing hearing." *See, e.g., Donato*, 96 F.3d at 630-31. In the case before us, there is no termination of government employment. We therefore

[18] We note that these cases were decided before the Supreme Court first "expressed its preference that courts address first the merits of the constitutional claims presented before turning to an analysis of qualified immunity." *Medeiros v. O'Connell*, 150 F.3d 164, 169 (2d Cir. 1998) (citing *County of Sacramento v. Lewis*, 523 U.S. 833, 841 n.5, 140 L. Ed. 2d 1043, 118 S. Ct. 1708 (1998)).

look for an understanding of the meaning and function of the "plus" factors by reviewing the history, language, and apparent meaning of *Paul* and its progeny.

2. "Stigma plus" from *Constantineau* to *Paul*. Prior to *Paul*, the concept of "liberty" in the Due Process Clause of the Fourteenth Amendment appears to have been widely understood to encompass a person's interest in his or her good name and reputation, without more. See Laurence H. Tribe, American Constitutional Law § 10-9 (2d ed. 1988). That principle seemed to be established by the Supreme Court's decision in *Wisconsin v. Constantineau*, 400 U.S. 433, 27 L. Ed. 2d 515, 91 S. Ct. 507 (1971). At issue there was a Wisconsin statute that allowed local officials to post in liquor stores a list of persons who became dangerous after heavy drinking and to forbid persons on the list from purchasing alcohol for one year. The officials were not required to notify targeted persons or allow them to be heard on the issue of whether they deserved the "badge of infamy" that the list imposed upon them. *Id.* at 437. The Court invalidated the statute, stating that "where a person's good name, reputation, honor, or integrity is at stake because of what the government is doing to him, notice and an opportunity to be heard are essential."

Id. At the heart of the Court's reasoning was the recognition that inclusion on the posted list may to some be merely the mark of illness, to others it is a stigma, an official branding of a person. The label is a degrading one. Under the [statute], a resident . . . is given no process at all. This appellee was not afforded a chance to defend herself. She may have been the victim of an official's caprice. Only when the whole proceedings leading to the pinning of an unsavory label on a person are aired can oppressive results be prevented.

Id. Chief Justice Burger and Justice Blackmun dissented on procedural grounds but agreed with the majority that "the Wisconsin statute appears, on its face and in its application, to be in conflict with accepted concepts of due process," and that the Court's decision on the merits therefore "very likely ... reaches a correct result." *Id.* at 440 (Burger, C.J., dissenting). The Supreme Court seemed to reaffirm these "accepted concepts" in two cases decided over the ensuing several years. In *Roth*, the Court declined to find a protected liberty interest in the termination of a non-tenured teacher's employment at a public university but suggested that such an interest would be implicated if the state imposed "on [the plaintiff] a stigma or other disability that foreclosed his freedom to take advantage of other employment opportunities." *Roth*, 408 U.S. at 573. Citing *Constantineau*, the *Roth* Court observed that the state "did not make any charge against [the plaintiff] that might seriously damage his standing and associations in his community. It did not base the nonrenewal of his contract on a charge, for example, that he had been guilty of dishonesty, or immorality. Had it done so," the Court reasoned, "this would be a different case." *Id.* As we have noted, this comment in *Roth* became the principal foundation for the jurisprudence of due process claims in connection with defamation (or "stigma") associated with termination of public employment.

Three years later, in *Goss v. Lopez*, 419 U.S. 565, 42 L. Ed. 2d 725, 95 S. Ct. 729 (1975), the Court held that students were entitled to due process before being suspended from public school on charges of misconduct. In addition to recognizing a property interest in the students' "legitimate entitlement to a public education," the Court appeared to conclude that the students had an independent liberty interest in their reputations. *Id.* at 574. Again citing *Constantineau*, the Court reasoned that the school's

charges of misconduct "could seriously damage the students' standing with their fellow pupils and their teachers as well as interfere with later opportunities for higher education and employment." *Id.* at 575. "The claimed right of the State to determine unilaterally and without process whether that misconduct has occurred immediately collides with the requirements of the Constitution." *Id.*

In its 1976 decision in *Paul*, the Court revisited the issue of government-imposed stigma and reoriented this precedent. The Court addressed a municipal police department's practice of circulating to local merchants flyers displaying photographs of persons deemed to be "active shoplifters." *See Paul*, 424 U.S. at 695. One such suspected shoplifter filed suit under 42 U.S.C. § 1983, alleging that under *Constantineau* the distribution of a flyer containing his photograph violated the Due Process Clause because it damaged his reputation without affording him the necessary procedural protections. *See id.* at 696-97.

Writing for the majority, then-Justice Rehnquist rejected this claim, declaring that contrary to the plaintiff's view of *Constantineau*, an individual's "interest in reputation ... is neither 'liberty' nor 'property' guaranteed against state deprivation without due process of law." *Paul*, 424 U.S. at 712. The Court acknowledged that it had "in a number of ... prior cases pointed out the frequently drastic effect of the 'stigma' which may result from defamation by the government in a variety of contexts." *Id.* at 701. But in each such case, the Paul Court reasoned, a liberty interest was implicated only because the state had not only stigmatized the plaintiff, but had also impaired or altered some other "more tangible interest[ ]," such as "a right or status previously recognized by state law." *Id.* at 701, 711. Thus, the Court observed, the deprivation in *Constantineau* was stigma plus the loss of the right,

previously recognized under state law, to purchase alcohol; in *Roth*, the Court would have found a liberty interest implicated by stigma only if it was combined with termination of government employment; and in *Goss*, "liberty" was involved only because there was stigma plus the extinguishment of the state-law right to public education.

Undergirding this analysis was the concern that a construction of the Due Process Clause under which damage to reputation alone could implicate a liberty interest "would seem almost necessarily to result in every legally cognizable injury which may have been inflicted by a state official acting under 'color of law' establishing a violation of the Fourteenth Amendment." *Id.* at 699. The Court noted that the plaintiff's complaint "would appear to state a classical claim for defamation actionable in the courts of virtually every State," and that "if the same allegations had been made about [the plaintiff] by a private individual, he would have nothing more than a claim for defamation under state law." *Id.* at 697, 698. Only on the basis of the fortuity that a state actor rather than a private party had made the defamatory comment could the plaintiff argue that his suit was "transmuted into one for deprivation . . . of rights secured under the Fourteenth Amendment." *Id.* at 697-98. Allowing that fortuity alone to establish a constitutional claim, the Court reasoned, would in effect render § 1983 "a font of tort law to be superimposed upon whatever systems may already be administered by the States." *Id.* at 701.

Paul's interpretation of decisions like *Constantineau*, *Roth*, and *Goss* was thus driven at least in part by "evident concern for values of federalism," Laurence H. Tribe, *Unraveling National League of Cities: The New Federalism and Affirmative Rights to Essential Government Services*,

90 Harv. L. Rev. 1065, 1101 n.135 (1977), and more specifically by a resolve to prevent § 1983 from "supplanting traditional tort law in laying down rules of conduct to regulate liability for injuries that attend living together in society," *Daniels v. Williams*, 474 U.S. 327, 332, 88 L. Ed. 2d 662, 106 S. Ct. 662 (1986). The Court sought, through *Paul*, to maintain "the delicate balance between state and federal courts and [to respect] the design of § 1983, a statute that reinforces a legal tradition in which protection for persons and their rights is afforded by the common law and the laws of the States, as well as by the Constitution." *Albright v. Oliver*, 510 U.S. 266, 284, 127 L. Ed. 2d 114, 114 S. Ct. 807 (1994) (Kennedy, J., concurring in the judgment).

The requirement that a plaintiff demonstrate some "plus" factor – an alteration or impairment of "a right or status previously recognized by state law," *Paul*, 424 U.S. at 711 – appears to be central to this effort. If, as some thought before *Paul*, the Fourteenth Amendment notion of "liberty" encompassed an individual's unadorned interest in his or her reputation, then the issue whether an allegation of "stigma" stated a federal constitutional or state-law claim would depend entirely on whether the defendant happened to be a state officer or a private citizen. A plaintiff who was defamed by a private defendant could sue only in state court on a state law claim; a plaintiff who was defamed by a government actor could sue in federal court on a federal claim. Such a regime would "trivialize the centuries-old principle of due process" by enlarging the scope of the Fourteenth Amendment beyond the type of "arbitrary exercise of the powers of government" against which that provision was intended to guard, *Daniels*, 474 U.S. at 332, 331 (internal quotation marks omitted), while, at the same time, invading the domain of the states by permitting a plaintiff to bypass common-law tort regimes in favor of the

"heavy artillery of constitutional litigation," *Steuart v. Suskie*, 867 F.2d 1148, 1150 (8th Cir. 1989).

The "plus" requirement avoids this result by ensuring that a plaintiff cannot allege as a deprivation of a constitutionally protected liberty interest an injury that could have been inflicted by a private citizen in a position analogous to the state actor. If the plaintiff can point to some material indicium of government involvement beyond the mere presence of a state defendant to distinguish his or her grievance from the garden-variety defamation claim, courts can be assured that § 1983 will not become "a body of general federal tort law" duplicative of "whatever systems may already be administered by the States." *Paul*, 424 U.S. at 701.[19]

Two sources lend further support to this understanding of the "plus" requirement. The first is *Siegert v. Gilley*, 500 U.S. 226, 114 L. Ed. 2d 277, 111 S. Ct. 1789 (1991), the only Supreme Court decision to apply and elaborate on the meaning of *Paul*. In an opinion by Chief Justice Rehnquist, the *Siegert* Court held that the plaintiff, a clinical psychologist who had voluntarily resigned from his post at one government hospital and was seeking to be "credentialed" at another, had not established a liberty interest arising from an allegedly defamatory letter

[19] The Connecticut law considered on this appeal provides broad immunity from civil suit for persons and entities involved in the maintenance and dissemination of the registry. *See* Conn. Gen. Stat. § 54-258(b). The provision of a remedy through § 1983 therefore would not overlap with any remedy provided by the State but rather interfere with the power of the State to establish that there shall be no remedy in specified circumstances.

written by his former supervisor to a prospective government employer. *See Siegert*, 500 U.S. at 227-29. The Court explained:

> The statements contained in the letter would undoubtedly damage the reputation of one in [the plaintiff's] position, and impair his future employment prospects. But the plaintiff in *Paul v. Davis* similarly alleged serious impairment of his future employment opportunities as well as other harm. Most defamation plaintiffs attempt to show some sort of special damage and out-of-pocket loss which flows from the injury to their reputation. But so long as such damage flows from injury caused by the defendant to a plaintiff's reputation, it may be recoverable under state tort law but it is not recoverable in a [constitutional] action. *Id.* at 234.

The Court did not suggest that the requisite tangible interest or burden needs to meet some threshold of substantiality or that it must implicate a certain kind of interest, but rather that it must at least entail some non-trivial state involvement that removes the plaintiff's complaint from the realm of traditional state-law defamation. Although "defamation, by itself, is a tort actionable under the laws of most States, but not a constitutional deprivation," *id.* at 233 (emphasis added), an allegation of defamation brigaded with other government action adversely affecting the plaintiff's interests properly invokes the protections of the Due Process Clause and therefore states a claim under § 1983.

The second source of support for our reading of the "plus" component is the Supreme Court's decision in *Parratt v. Taylor*, 451 U.S. 527, 68 L. Ed. 2d 420, 101 S. Ct. 1908 (1981), *overruled in part on other grounds by*

Daniels, 474 U.S. at 330-31. In *Parratt*, the Court held that where, through a state official's misconduct, a plaintiff is stripped of property in circumstances in which pre-deprivation process is not feasible and the post-deprivation remedy provided by the state is adequate, the plaintiff may not bring a § 1983 action for violation of his or her procedural due process rights. *See Parratt*, 451 U.S. at 541-44. In such circumstances, the Court held, the state post-deprivation remedy provides all the process that is due.

The rationale underlying *Parratt* parallels that of *Paul*: "To accept [plaintiff's] argument that the conduct of the state officials in this case constituted a violation of the Fourteenth Amendment would almost necessarily result in turning every alleged injury which may have been inflicted by a state official acting under 'color of law' into a violation of the Fourteenth Amendment cognizable under § 1983." *Id.* at 544. Indeed, *Parratt* quoted *Paul* for the proposition that permitting constitutional suits on the basis of random and unauthorized actions by state officials when post-deprivation remedies are adequate "'would make of the Fourteenth Amendment a font of tort law to be superimposed upon whatever systems may already be administered by the States.'" *Id.* (quoting *Paul*, 424 U.S. at 701).

The Supreme Court has since suggested a relationship between the *Paul* and *Parratt* analyses, *see Daniels*, 474 U.S. at 332-33, and courts cite the two for the proposition that "the Due Process Clause of the Fourteenth Amendment . . . does not transform every tort committed by a state actor into a constitutional violation." *Deshaney v. Winnebago County Dep't of Soc. Servs.*, 489 U.S. 189, 202, 103 L. Ed. 2d 249, 109 S. Ct. 998 (1989); *see also, e.g.,*

Mahoney v. Kesery, 976 F.2d 1054, 1060 (7th Cir. 1992) (citing *Paul* and *Parratt* for the assertion that "the Supreme Court has been emphatic that not every tort committed by public officers is actionable under the Constitution, even though every one could be thought to deprive the tort's victim of an interest in the nature of liberty or property"). We therefore look to our interpretation of *Parratt* as a proper source of guidance on the import of *Paul*.

In *McClary v. O'Hare*, 786 F.2d 83 (2d Cir. 1986), we held that *Parratt* does not apply to substantive due process claims because substantive due process violations are "'complete as soon as the prohibited action is taken'" and therefore do not depend upon the adequacy of any pre- or post-deprivation remedies. *McClary*, 786 F.2d at 86 n.3 (quoting *Daniels*, 474 U.S. at 338 (Stevens, J., concurring in the judgment)). But this conclusion could effectively swallow the *Parratt* rule, at least in those cases – such as *McClary* itself, where the plaintiff's decedent lost his life – in which a plaintiff whose procedural due process suit would be barred by *Parratt* could instead plead the claim as one for a violation of substantive due process. *See* 786 F.2d at 88-89; *see also Albright*, 510 U.S. at 285 (Kennedy, J., concurring in the judgment) (observing that *Parratt* could be avoided by "attaching a substantive rather than procedural label to due process claims"). This would thwart the purpose of *Parratt* by permitting federal constitutional claims to proceed on the basis of conduct that the Court has deemed insufficient when framed in procedural terms.

Our analysis in *McClary* parallels a federalism-based interpretation of the *Paul* "plus" factors. We were presented in *McClary* with both substantive and procedural

due process claims against state and county officials brought by the administratrix of the estate of a highway worker who was killed by a falling crane while working on a government project. 786 F.2d at 84-85. We first rejected the procedural due process claim on the basis, inter alia, of *Parratt*, *Id.* at 86-88, and then turned to "the more difficult question . . . [at] the heart of this case": "when a deprivation of life or liberty assumes constitutional dimensions" for purposes of substantive due process. *Id.* at 88.

We began our discussion by observing that the Due Process Clause was designed to guard against abuses of "governmental power." *Id.* (citation and internal quotation marks omitted). We then noted that, as was the case in *Daniels*, no such abuse of state authority had been alleged; "the only fact distinguishing [the plaintiff's complaint] from an ordinary tort action . . . is the identity of [the defendant]." *Id.* at 89. We reasoned that where "identical actions could have been carried out by a private [defendant], for the same reasons and with the same regrettable consequences," substantive due process was not implicated. *Id.* Only where the defendant's action is "governmental in nature" – where "a government official, because of his unique position as such, was able to impose a loss" – would the protections of the Fourteenth Amendment come into play. *Id.* (internal quotation marks omitted). Because the plaintiff could not point to any state activity in the case beyond the mere presence of a state defendant, we dismissed her claim on the ground that "the substantive component of the Due Process Clause does not provide a remedy to a public employee that would not be available to a private employee subject to identical conduct by his employer." *Id.*

McClary thus held that a plaintiff pleads a deprivation of an interest protected by substantive due process only when he or she demonstrates some state action that distinguishes the allegation from an ordinary tort claim. On similar reasoning, we hold that a plaintiff establishes a "plus" factor for purposes of the *Paul v. Davis* "stigma plus" test only if he or she points to an indicium of material government involvement unique to the government's public role that distinguishes his or her claim from a traditional state-law defamation suit.

3. The "plus" factor in this case. Applying this holding to the case before us, we agree with the district court that the statutory registration duties imposed on the plaintiff constitute a "plus" factor. Those obligations (1) alter the plaintiff's legal status, and (2) are "governmental in nature," *cf. McClary*, 786 F.2d at 89, insofar as they could not be imposed by a private actor in a position analogous to the state defendants, and therefore differentiate the plaintiff's complaint from a traditional defamation claim brought under state law.

The registration duties imposed by Connecticut's sex offender law are extensive and onerous. With a few exceptions, a person who is required to register because he or she was convicted of a criminal act against a minor, a nonviolent sexual offense, or a felony with a sexual purpose must verify his or her address annually for ten years. *See* Conn. Gen. Stat. §§ 54-251(a), 54-253(a), 54-254(a), 54-257(c). Anyone who was convicted of a sexually violent offense must do so every ninety days for the rest of his or her life. *See Id.* §§ 52-252(a), 54-253(a), 54-257(c). To conduct this verification, the state mails to a registrant's last known address a nonforwardable form that the registrant must complete and return within ten days of

receipt. *See Id.* § 54-257(c). "In the event that a registrant fails to return the address verification form, the Department of Public Safety shall notify the local police department or the state police troop having jurisdiction over the registrant's last reported address, and that agency shall apply for a warrant to be issued for the registrant's arrest. . . ." *Id.*

Whenever any registrant changes his or her address, he or she must notify the Commissioner of Public Safety within five days. *See Id.* §§ 54-251(a), 54-252(a), 54-254(a). If he or she "regularly travels into or within another state or temporarily resides in another state for purposes including, but not limited to employment or schooling," he or she must notify the Connecticut Commissioner and register with the appropriate agency in the other state. *Id.* The registrant must also provide blood samples for purposes of DNA analysis when he or she is first registered and must appear at a specified location to have his or her photograph taken whenever the Commissioner requests, *see Id.* §§ 54-250(3), 54-251(a), 54-252(a), 54-253(b),(c), 54-254(a), but at least once every five years, *see Id.* § 54-257(d). Failure to abide by any of these obligations constitutes a class D felony, punishable by up to five years in prison. *See Id.* §§ 54-251(d), 54-252(b), 54-253(c), 54-254(b).

We think that these obligations, taken together, easily qualify as a "plus" factor under *Paul*. The imposition on a person of a new set of legal duties that, if disregarded, subject him or her to felony prosecution, constitutes a "change of [that person's] status" under state law. *Paul*, 424 U.S. at 712. Such action is quintessentially "governmental in nature." *McClary*, 786 F.2d at 89 (citation and internal quotation marks omitted). Moreover, the presence

of such an alteration of the registrant's legal rights and duties serves the federalism-based function of the "plus" factor: to ensure that the plaintiff cannot convert a state-law defamation claim into a § 1983 action because of the mere fortuity that he or she is suing a state defendant. The injury that the plaintiff alleges in this case – stigma plus an alteration in his or her state-law duties and status – could not have been inflicted by a private person in a position analogous to that of the state. Only a defendant employing his or her "power as a state official" could impose and enforce the duties inherent in Connecticut's sexual offender registry law and then publish the information obtained by those state-imposed duties. *Id.* (emphasis in original).

The defendants assert that "every federal court that has addressed the issue has held that no liberty interest is implicated in such a context." Appellants' Br. at 23. They are incorrect. Prior to the district court's decision in this case, three other district courts – including one in the Southern District of New York – have used similar reasoning to identify a protected liberty interest under the "stigma plus" test. *See Doe v. Pryor*, 61 F. Supp. 2d 1224, 1231 (M.D. Ala. 1999) (concluding that the imposition of new legal duties and the extinguishment of other rights, including "the right [to] establish a new residence without giving prior notice to government officials," constitute a "plus" factor); *Doe v. Pataki*, 3 F. Supp. 2d 456, 468 (S.D.N.Y. 1998) ("In light of these requirements placed on registrants, there can be no genuine dispute that registration alters the legal status of all convicted sex offenders subject to the Act. . . . These requirements obviously encroach on the liberty of convicted sex offenders, and, therefore, they suffer a tangible impairment of a right in

addition to mere harm to reputation."); *W.P. v. Poritz*, 931 F. Supp. 1199, 1219 (D.N.J. 1996) (noting that "stigma plus" can be established "by coupling the reputational damage with the . . . continuing legal status as a registrant and the duties imposed as a result"), *rev'd on other grounds sub nom. E.B. v. Verniero*, 119 F.3d 1077 (3d Cir. 1997).

Since oral argument of this appeal, moreover, the United States District Court for the District of Columbia has held that a sex offender registry statute similar to Connecticut's infringes upon a protected liberty interest because its registration requirements and long period of supervised release impose an "extraordinary breadth and extent of . . . burdens" which, when combined with reputational harm, satisfy the "stigma-plus" test. *Doe v. Williams*, 167 F. Supp. 2d 45, 2001 U.S. Dist. LEXIS 21699, 2001 WL 1241960, at *7, slip op. at 13, (D.D.C. 2001).

In addition, the Third Circuit has identified a protected liberty interest in these circumstances, albeit by relying upon a state-created right to privacy rather than the statutory obligations imposed on registrants. *See E.B. v. Verniero*, 119 F.3d 1077, 1105 (3d Cir. 1997); *see also Roe v. Farwell*, 999 F. Supp. 174, 196-97 (D. Mass. 1998) (same). State courts, including the Supreme Court of New Jersey in the seminal case of *Doe v. Poritz*, 142 N.J. 1, 99-106, 662 A.2d 367, 417-21 (1995), have reached a similar conclusion.

It is true that the Sixth and Ninth Circuits have not found a liberty interest in analogous circumstances. *See Cutshall*, 193 F.3d at 479-82; *Russell v. Gregoire*, 124 F.3d 1079 (9th Cir. 1997). A substantial number of district courts have held similarly. *See, e.g., Corbin v. Chitwood*,

145 F. Supp. 2d 92 (D. Me. 2001); *Akella v. Mich. Dep't of State Police*, 67 F. Supp. 2d 716 (E.D. Mich. 1999); *Femedeer v. Haun*, 35 F. Supp. 2d 852 (D. Utah 1999), *aff'd in part, rev'd in part*, 227 F.3d 1244 (10th Cir. 2000); *Lanni v. Engler*, 994 F. Supp. 849 (E.D. Mich. 1998); *Doe v. Kelley*, 961 F. Supp. 1105 (W.D. Mich. 1997). However, these courts have not necessarily disagreed with the contention that the ongoing legal obligations of sex offender registrants constitute a "plus" factor. Neither the Sixth Circuit in Cutshall nor the Ninth Circuit in *Russell* was presented with such an argument. Instead, the plaintiff in each of those cases claimed that the "plus" factor consisted of the state's intrusion on his or her right to privacy. *See Cutshall*, 193 F.3d at 479; *Russell*, 124 F.3d at 1093-94. *See also Williams*, 167 F. Supp. 2d 45, 2001 U.S. Dist. LEXIS 21699, at *56-*57, 2001 WL 1241960, at *9, slip op. at 19-20 (making similar observations about, inter alia, *Cutshall* and *Russell*).

The defendants challenge the conclusion that the Connecticut sexual offender law satisfies the "plus" requirement on two grounds. First, they allege that the registration requirements constitute only a "minimal burden" on registrants, an intrusion no more onerous than that which the federal and state tax laws impose on all citizens and no more inconvenient than the type of obligations one encounters when completing census questionnaires or renewing a driver's license. The notion that meeting the burdens of the Connecticut registry law, which we have described in some detail, is comparable to paying taxes or complying with census and driving registration regulations is breathtaking. But in any event, as we have explained, the dispositive issue is neither the degree of burden inherent in the proffered "plus" factor nor

the substantiality of the interest, right, or status affected thereby. Rather, at least when the governmental action is not trivial, the inquiry turns on the character of the action on which the plaintiff seeks to establish the "plus" component. Where, as here, that action is "governmental in nature" – a characterization supported by the defendants' comparison of the registration requirements to other obligations only the government can impose – it constitutes a "plus" factor that triggers constitutional protection.

Second, the defendants argue that the registration requirement's relation to the stigma is too attenuated to constitute a "plus" factor. The defendants point out that the stigma arises not from the registration requirement but rather from the publication of the registration information. They contend that the harm of stigma and the additional tangible burden of the "plus" factor must arise from the same government act. In a similar vein, the defendants point out that a hearing permitting the plaintiff to establish that he is not dangerous would remedy only the stigma while leaving the registration requirement intact. According to the defendants, this demonstrates that the "plus" factor in this case is insufficient.

We are unpersuaded by this argument. Our cases have not required the plaintiff to seek a remedy for both the stigma and the "plus" factor. *See, e.g. Donato*, 96 F.3d at 633 ("A hearing must be held for the limited purpose of giving a discharged employee an opportunity to clear her name. . . . The employer need not rehire the employee even if she can prove the inaccuracy of the stigmatizing allegations."); *Brandt*, 820 F.2d at 43 fired government employee sought a name-clearing hearing but not reinstatement to his position). And we have never required that the stigma and the "plus" factor arise from a single government act.

Indeed, in the government employment context, we have required only a "concurrent temporal link" between the separate acts of termination and defamatory statements. *See Martz*, 22 F.3d at 32 (collecting cases); *see also Brandt*, 820 F.2d at 44-45 (finding a liberty interest implicated where a government employee had been terminated but where the government had not published the reasons for the termination and the alleged stigma was merely a possible future event).

We think that the temporal nexus between the stigma and the "plus" factor in this case is sufficiently close to support a liberty interest. The information published by the State is obtained by means of the registration requirement, and a person can be stigmatized by publication of the registry only if he or she is first subjected to that requirement. The "plus" factor is thus a necessary condition for the stigmatization. *Cf. Valmonte*, 18 F.3d at 1002 (finding a liberty interest implicated where the state's stigmatizing charges of suspected child abuse were "coupled with a statutory impediment mandating that employers justify hiring" an individual so charged).

Our reason for rejecting the defendants' argument becomes even clearer in light of the "plus" factor's function of reserving the "heavy artillery" of the Due Process Clause for those cases involving uniquely governmental conduct. The requirement that sexual and other offenders register with the State – a requirement that can only be imposed by the State and that is a necessary predicate for the stigmatizing publication of the registry – places this case in that category.

III. Ex Post Facto Claim

The plaintiff cross-appeals the district court's grant of summary judgment to the defendants on his claim that the registration requirement constitutes a punishment in violation of the Ex Post Facto Clause of Article I, section 10 of the Constitution.[20] The district court observed that the Clause prohibits states from applying a new penal sanction to a crime that has already been committed. *See Doe v. Lee*, 132 F. Supp. 2d at 66 (citing *Kansas v. Hendricks*, 521 U.S. 346, 370, 138 L. Ed. 2d 501, 117 S. Ct. 2072 (1997)); *see also Pataki*, 120 F.3d at 1272. In performing its analysis of the Connecticut law under the Ex Post Facto Clause, the court turned to our decision in *Pataki*, which established a two-part test to determine whether the law in issue is penal: "first, whether the legislature intended the statute to be criminal or civil; and, second, if the intent was nonpunitive, whether the statute is so punitive in fact that it cannot legitimately be seen as civil in nature." *Doe v. Lee*, 132 F. Supp. 2d at 66 (citing *Pataki*, 120 F.3d at 1274-75).

With respect to the first part of the test, the district court canvassed the "limited legislative history materials" supplied to it by the parties and held that it does not indicate a punitive legislative purpose. 132 F. Supp.2d at 67. The court noted that "there is nothing in the text [of the law] that suggests the legislature sought to punish sex offenders rather than protect public safety." *Id.* It also observed differences between the New York sex offender

[20] Art. I, @ 10 of the Constitution provides, in relevant part: "No State shall . . . pass any . . . ex post facto law. . . ."

registration law at issue in *Pataki* and the Connecticut law, including the fact that the former, unlike the latter, provided for individualized assessment of the dangerousness of the registrant. *See Id.* at 67-68. The court concluded that the "differences, taken separately or cumulatively and viewed in light of the [Connecticut] legislative history and the structural features indicating a regulatory purpose, do not demonstrate that the legislature acted with punitive intent" in adopting the law. *Id.* at 68. We find no basis upon which to disagree.

With respect to the second part of the *Pataki* test – whether, although regulatory in intent, the registry law is punitive in fact – the district court, citing *Pataki*, held that a fact-specific inquiry is required, but that only "the clearest proof" would suffice to meet the test. *Doe v. Lee*, 132 F. Supp. 2d at 68 (internal quotation marks omitted in original). In making the punitive-in-fact determination, the district court consulted the factors set forth by the Supreme Court in *Kennedy v. Mendoza-Martinez*, 372 U.S. 144, 168, 9 L. Ed. 2d 644, 83 S. Ct. 554 (1963).[21] The court considered two aspects of the Connecticut law that the plaintiff argued indicated a "punitive effect": first, the fact that its registration requirement applies to behavior that is already a crime, and second, a perceived "excessiveness"

[21] The Mendoza-Martinez considerations are whether the sanction (1) involves an affirmative disability or restraint, (2) has historically been regarded as a punishment, (3) comes into play only on a finding of scienter, (4) will promote the traditional aims of punishment – retribution and deterrence, (5) applies to behavior that is already a crime, (6) may rationally be connected to an alternative, nonpunitive purpose, and (7) appears excessive in relation to that alternative purpose. *Doe v. Lee*, 132 F. Supp. 2d at 68 n.28.

of its dissemination of information via the Internet. *Doe v. Lee*, 132 F. Supp. 2d at 68-70. The court concluded: "Neither of these factors by itself, nor the two in combination, establishes by the 'clearest evidence' that the law is punitive in fact." *Id.* at 68.

As to the first, the fact that registration is triggered by conviction, the district court held that that could not be enough to render the statute punitive in fact because that characteristic is "common to all regulatory disabilities that follow from a prior conviction, such as the loss of the right to vote." *Id.* at 69. "The [Supreme] Court has found such a link insufficient to establish unconstitutionality." *Id.* (citing *United States v. One Assortment of 89 Firearms*, 465 U.S. 354, 365-66, 104 S. Ct. 1099, 79 L. Ed. 2d 361 (1984); *United States v. Ward*, 448 U.S. 242, 250, 65 L. Ed. 2d 742, 100 S. Ct. 2636 (1980)).

The district court also disagreed with the plaintiff's position that the asserted "excessiveness" of the registry scheme, principally the use of a website for dissemination, made it punitive in fact.

There can be no doubt that Internet availability of registry information is rationally related to the goals of public safety and law enforcement. Indeed, use of the Internet is the most efficient means of making the information available to residents of the state, and it will become more efficient as Internet accessibility increases over time. Because use of the Internet furthers these nonpunitive purposes, this feature of the [statute] is insufficient to render the statute punitive in fact. *Id.* (citation omitted.)

Unlike the question of legislative intent, the punitive-in-fact aspect of the Connecticut sex offender registry

statute as written is problematic. We acknowledged in *Pataki* that there "the question [was] not free from doubt," 120 F.3d at 1265. We ultimately held, however, that New York's version of a sex offender registration law did not violate the Ex Post Facto Clause, but we based our holding as to the punitive-in-fact inquiry significantly on the tiered structure of the New York law under which the degree of harshness with which registering offenders are treated depends on an individualized assessment of the level of risk to the community posed by each of them. *See Id.* at 1281-83. Connecticut's law provides for no such individualized assessment, a fact at the core of the plaintiff's challenge to it here. *Cf. Doe v. Otte*, 259 F.3d 979, 991 (9th Cir. 2001) (striking down Alaska sex offender registry law similar to Connecticut's on ex post facto grounds, calling it "highly significant" that the statute was not limited to persons "posing a future risk to the community.")

But we need not and do not decide whether, because of the undifferentiated nature of the Connecticut law, the Connecticut statute as written is punitive-in-fact under ex post facto analysis. We have today affirmed the court's injunction under the Due Process Clause prohibiting the State from disseminating sex offender registry information without giving persons on the registry an opportunity to avoid being listed in a manner suggesting that he or she is probably currently dangerous by establishing that he or she is not. The State of Connecticut therefore stands enjoined from enforcing the registry law in the manner that might also render it punitive-in-fact and therefore unconstitutional under the Ex Post Facto Clause.

In order to provide for a sex offender registry and its dissemination consonant with the injunction that we affirm today, Connecticut will likely adopt new procedures

more sensitive to whether those on a widely disseminated registry are likely to be currently dangerous. The State may choose a scheme clearly permissible under the Ex Post Facto Clause under Pataki. Indeed, it could adopt a law constitutionally indistinguishable from that which we upheld on ex post facto grounds in that case. The plaintiff may of course challenge any new Connecticut law or procedure to determine whether it is consonant with the Ex Post Facto Clause. It will be soon enough to address the issue then.

IV. The Injunction

The district court granted the permanent injunction requested by the plaintiff. The injunction principally prohibits the defendants from "disclosing or disseminating to the public, either in printed or electronic form (a) the Registry or (b) Registry information concerning a member of the due process class [including the plaintiff] if the information identifies the class member as being included in the Registry," and from "identifying any member of the due process class as being included in the Registry." *Doe v. Lee*, No. 3:99CV314. In arriving at the terms of the injunction, the district court was required to "tailor the remedy to fit the nature and extent of the violation." *United States v. Yonkers Bd. of Educ.*, 837 F.2d 1181, 1235 (2d Cir. 1987). We conclude that because it is the communication to the public of the fact that the plaintiff (and other members of the class) is in the registry, without a hearing as to the current danger that the plaintiff (and other members of the class) poses, that is both central to the constitutional infirmity of the statute and the principal object of the injunction, the injunction is properly tailored to fit the nature and extent of the violation.

Finally, we note the narrowness of the basis on which we affirm the judgment of the district court and the injunction it contains. We hold only that the plaintiff and the members of the due process class are entitled to the opportunity to have a hearing consistent with due process principles to determine whether or not they are particularly likely to be currently dangerous before being labeled as such by their inclusion in a publicly disseminated registry. We make no judgment as to what form that process should take. And we make none as to what the State may do once such a process is complete if, pursuant thereto, a particular offender is determined not to be currently dangerous or as to whether or to what extent the State may publicly disseminate information about such an offender.

CONCLUSION

For the foregoing reasons, we affirm the judgment of the district court.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse, Foley Square, in the city of New York, on the 19th day of October, two thousand and one.

BEFORE: Hon. Jose A. Cabranes,
Hon. Rosemary S. Pooler,
Hon. Robert D. Stack
Circuit Judges.

Docket Nos. 01-7561 (L); 01-7600 (XAP)

JOHN DOE, Individually and on behalf of others similarly situated,

Plaintiff-Appellee-Cross-Appellant,

SAMUEL POE, individually and on behalf of others similarly situated,

Plaintiff-Appellee,

V.

DEPT. PUBLIC SAFETY ON BEHALF OF HENRY C. LEE, Comm., OFFICE OF ADULT PROBATION, on behalf of Robert Bosco Director, JOHN ARMSTRONG, Comm.

Defendants-Appellants-Cross-Appellees.

Appeal from the United States District Court for the District of Connecticut.

This case came on to be heard on the transcript of record from the United States Court for the District of Connecticut and was agued by counsel.

ON CONSIDERATION WHEREOF, it is hereby ORDERED, ADJUDGED and DECREED that the judgment of said district court be and it hereby is AFFIRMED in accordance with the opinion of this Court.

FOR THE COURT:
ROSEANN B. MACKECHNIE,
Clerk by

/s/ _____
Arthur M. Heller,
Administrative Attorney

ISSUED AS MANDATE:
Nov. 13, 2001

Office of the Clerk
Supreme Court of the United States
Washington, D.C. 20543-0001

May 20, 2002

Richard Blumenthal, Esq.
Attorney General
55 Elm Street
P.O. Box 120
Hartford, CT 06141-0120

RE: 01-1231 – Connecticut Department of Public Safety v. Doe

Dear Mr. Blumenthal:

The Court today entered the following order in the above-entitled case:

"The petition for a writ of certiorari is granted."

The following items are enclosed: Memoranda describing the procedures under the Rules, a Specification Chart, the Guide to Counsel, Memorandum to Brief Printing Companies, and Counsel of Record Information Form. Although this case will not be scheduled for oral argument until the 2002 Term please note that requests for extensions of time to file briefs on the merits are not favored.

If you have any questions, please contact me.

Sincerely,

WILLIAM K. SUTER, CLERK

/s/

Denise J. McNerney
Merits Cases Clerk
(202) 479-3032

Enclosures